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BILL 173

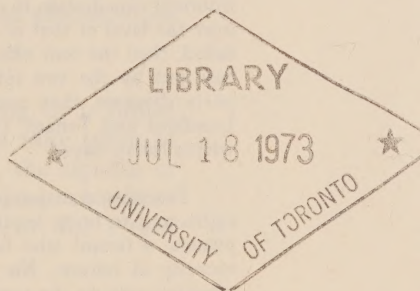
Private Member's Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

70

An Act to provide for Rent Control and Security of Tenure

MR. CASSIDY



EXPLANATORY NOTE

The purpose of the Bill is to set guidelines to govern rent determinations and to provide tenants with security of tenure.

Starting from the historical rents that prevailed on December 31, 1972, rent increases for residential accommodation in major Ontario cities should be justified only in relation to increases in costs and not in relation to scarcity, the increase in rents on new accommodation, or speculative factors.

The intention is that most rent settlements would continue to be made without reference to government, but that the Ontario Landlord and Tenant Tribunal established in the Act, as well as the network of rent regulation officers located in major cities around the Province, would be available to tenants or to landlords in order to mediate or to resolve questions of rent and the relations between landlords and tenants.

A tenant or landlord could apply to the rent regulation officer for informal conciliation in cases where there was a dispute with the other party over the level of rent or over other terms of a lease. If informal conciliation failed, then the rent officer could examine the landlord's books, consider the case put by the two sides, and make a rent determination. Should either party disagree, they could appeal the rent officer's decision to the Ontario Landlord and Tenant Tribunal which would make a final binding decision within thirty days.

The second major principle is this: In order to protect their bargaining rights and to bring tenants' position closer to the dignity enjoyed by homeowners, a tenant who fulfilled his normal obligations would be guaranteed security of tenure. No order of eviction or termination of lease would be effective without the approval of the tribunal, and the grounds for an eviction or termination of lease will be limited to wilful non-payment of rent, undue nuisance, undue damage to the landlord's property, or where the landlord or a relative wishes to occupy the property (this right may only be exercised once every five years, and on the demonstration of need).

Tenants would be empowered to exercise their rights under the Act as groups as well as individually.

BILL 173

1973

An Act to provide for Rent Control and Security of Tenure

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

INTERPRETATION

1. In this Act,

Interpre-
tation

- (a) "landlord" includes a lessor, owner or person giving or permitting the occupation of premises;
- (b) "rent" means payment of any kind to a landlord for the provision of accommodation and any services relating to that accommodation;
- (c) "rent determination" means the fixing of a dollar value for rent and shall be deemed to take place at the commencement of a new tenancy, the signing or renewal of a lease, the transfer of a lease or where there is a change in the amount of rent, for a rent period;
- (d) "residential premises" means a premises used for residential purposes and includes a furnished room except where the furnished room is in a premises where a landlord is renting less than three furnished rooms;
- (e) "tenant" includes a lessee, occupant or subtenant;
- (f) "Tribunal" means the Ontario Landlord and Tenant Tribunal established under this Act.

PART II

APPLICATION

Application **2.**—(1) Subject to subsection 2, this Act applies to all premises on which rent is paid where the premises is located in a municipality having a population of more than 100,000 persons.

Idem (2) The jurisdiction and powers of the director, the rent regulation officer, and of the Tribunal shall be effective in municipalities with a population of less than 100,000 where the municipal council has, by by-law, declared its intention to permit the director and the Tribunal to operate, but any repeal of such by-law shall not have effect for five years from its passage or for a period of one year of the passage of the repeal by-law, whichever period is greater.

PART III

RENT REGULATION

Director **3.**—(1) There shall be a rent regulation director who shall be appointed by the Lieutenant Governor in Council.

Powers and duties (2) The director shall exercise the powers and shall discharge the duties conferred and imposed upon him by this Act and the regulations under the supervision of the Attorney General.

Rent regulation officer (3) A rent regulation officer or officers shall be appointed with an office in each municipality where rent regulation applies.

Duties of a rent regulation officer (4) A rent regulation officer shall,

- (a) advise landlords and tenants in tenancy matters;
- (b) receive complaints and seek to mediate disputes between landlords and tenants;
- (c) disseminate information for the purpose of educating and advising landlords and tenants concerning rental practices, rights and remedies;
- (d) upon written application from a landlord or tenant make a rent determination based on the principles set out in this Act.

4. A rent regulation officer may, with the written consent of a landlord and tenant, exercise all the powers conferred under this Act to the Tribunal, provided that a decision made by a rent regulation officer under this section shall be communicated in writing to both parties and may be appealed within fifteen days to the Tribunal.

Rent determination by a rent regulation officer

5. Where a rent regulation officer is making a rent determination or acting under section 3, he shall have free access to any accounts, financial statements, mortgages or any other information necessary in order to verify statements submitted by the landlord or the tenant and upon submission to the rent regulation officer or the Tribunal, such statements shall also be submitted to the other contending parties.

Access to accounts, etc.

6. A record of every rent determination for a particular rented premises shall be submitted by the landlord to the rent regulation officer in the municipality in which the premises are located within five days of the making of the rent determination, and a copy of the rent determination together with a copy of the two immediately previous rent determinations, if such determinations took place, pertaining to the same premises shall be sent to both the landlord and the tenant.

Record of rent determination

7. A landlord or a tenant may appeal in writing to the rent regulation officer within fifteen days of the receipt of notification given under section 5, and after notifying the two parties, the rent regulation officer shall make a new determination of rent within fifteen days of receipt of the appeal.

Appeal

8.—(1) A rent determination made by a rent regulation officer or by the Tribunal shall be based on the principle that rents prevailing as of the 31st day of December, 1972, on a rented premises should be permitted to increase only because of proven increases in costs for maintenance, heating, supervision, utilities, the reasonably amortized costs of rehabilitation, and any other appropriate operating costs, that decreases in such costs, the withdrawal of services or the deterioration of the property may justify a reduction of rent, and that changes in rent may be justified by a shift in contractual obligations agreed upon between a landlord and a tenant.

Permitted rent increases

(2) In the case of a dwelling rented for the first time after the 1st day of January, 1973, a rent determination shall be

Idem

based on the principles set out in this section and may also be related to a fair return on the original capital cost of the dwelling.

Standard
form of
lease

9.—(1) All tenancies of more than three months duration shall conform to one of the standard lease forms as prescribed in the regulations and any change from the wording of a standard lease form or change from one standard lease form to another must be agreed to by both parties to the lease and such changes shall be reported to the local rent regulation officer in the same manner as a new rent determination.

Enforcement
of a lease

(2) A lease on a residential premises shall be enforceable upon a written application to the Tribunal, which for the purposes of this section shall have all the powers of a county or district court.

Trust
fund

10.—(1) Where a landlord fails to fulfil his covenants under a lease, a tenant may pay any rent due or owing into a trust fund supervised by the rent regulation officer in his municipality.

When money
to be paid
into trust
fund

(2) A rent regulation officer shall pay to a landlord rents deposited in a trust fund under subsection 1 when,

- (a) the landlord has fulfilled the covenants specified by the tenant;
- (b) the rent regulation officer has determined the landlord has fulfilled the covenants that were specified by the tenant; or
- (c) the rent regulation officer has determined that there was no breach of covenant by the landlord.

Appeal to
Tribunal

(3) A decision of the rent regulation officer under this section may be appealed in writing to the Tribunal.

Rent deter-
mination
by rent
regulation
officer

11.—(1) Where a landlord and a tenant are unable to agree to a lease or to a new rent determination, either party may seek a rent determination by application in writing to the local rent regulation officer who shall deliver his decision within fifteen days and no new rent determination under this section and no termination of lease shall take effect until fifteen days after the rent regulation officer has delivered his decision, and all such decisions may be appealed to the Tribunal upon notice within fifteen days of the decision of a rent regulation officer.

(2) On receipt of an appeal or request for a rent determination under section 6 or 9, the rent regulation officer shall notify both parties, shall meet with both parties or their representatives, and shall submit or give access to both parties to any written information that either submits pertaining to the rent determination. ^{Notice to parties}

12. Every clause in a lease directly or indirectly intended to vary the rent during the course of a lease is without effect. ^{Clause to vary rent invalid}

13.—(1) No landlord shall refuse a tenancy by reason of race, creed, sex, colour, nationality, ethnic origin, place of birth, language, age or marital status, source of income or political affiliation. ^{No refusal for race, sex, colour, etc.}

(2) No landlord shall change the rights of a lessee by reasons of an increase in the number of occupants of a dwelling unless the space of the dwelling warrants it. ^{Change in rights of lessee}

(3) No landlord shall refuse a tenancy to a person by reason of the number of persons intending to occupy a dwelling, unless the space of the dwelling warrants it. ^{Refusal of tenancy due to space}

(4) For the purposes of this section, no limitation of space shall be deemed to apply where the space available in the rented premises exceeds 250 square feet for each adult and 125 square feet for each child under the age of eighteen occupying or intending to occupy the premises. ^{Idem}

(5) Notwithstanding subsection 1, a landlord may restrict occupancy in a building to tenants aged sixty and over. ^{Idem}

14. The rent regulation officer in each municipality covered by this Act shall maintain a record of all rent determinations notified to him for rented premises in that particular municipality and shall make available the records for a particular building to any *bona fide* tenant of that building during normal business hours. ^{Record to be kept of rent determinations}

15. No rent increase applicable within a particular year shall exceed 5 per cent of the rent determination recorded in the previous year, or the last previous rent determination if that was earlier than the previous year, notwithstanding any evidence of increased expenses or rehabilitation costs submitted by the landlord. ^{Rent increase limited to 5 per cent}

16. The payment of a capital sum at the commencement of a new tenancy is deemed to be an advance payment of rent and no tenant shall be liable to begin paying rent until ^{Payment of capital sum deemed advance on rent}

the month after the month in which the cumulated rent that would otherwise be payable under the lease exceeds the amount of the capital payment that has been made to the landlord or to his agent.

Access to
statements
on appeal
by tenant

17. In the case of an application or appeal to the rent regulation officer or the Tribunal for rent determination, the tenant shall have access to any statements submitted by the landlord to justify the change in rent, and the landlord shall be obliged to supply to the tenant and to the rent regulation officer or Tribunal an annual statement of costs and expenses for the building demonstrating how costs have risen in relation to the particular unit concerned.

PART IV

LANDLORD AND TENANT TRIBUNAL

Tribunal

18.—(1) There shall be a Tribunal known as the Ontario Landlord and Tenant Tribunal composed of such members as are appointed under subsection 5.

Duties of
Tribunal

(2) The Tribunal shall hear and decide,

(a) appeals of decisions made by rent regulation officers under this Act; and

(b) all other such matters referred to it under this Act or any other Act.

Decisions of
Tribunal
binding

(3) All decisions of the Tribunal shall be binding and subject to appeal only on points of law, provided that the Tribunal may consider a rent determination again no less than one year from the time it has previously been brought before the Tribunal and may reconsider any other matter upon re-application by the landlord or tenant.

Tribunal
may levy
costs

(4) Where the Tribunal determines that a landlord or a tenant is using the Tribunal for the purposes of harassment, the Tribunal may levy all or part of the costs of hearings caused or instigated by that landlord or tenant.

Appointment
of members
of Tribunal

(5) Subject to subsection 6, the Lieutenant Governor in Council shall appoint no less than ten and no more than twenty members to the Tribunal and shall appoint one of such members, who shall be a full-time member, as Chairman and may appoint one or more other such members as Vice-Chairmen.

Term of
office

(6) Members shall serve for a fixed term of five years and may be reappointed once.

(7) No less than nine members of the Tribunal shall be full-time members. Nine members to be full-time

(8) Appointments to the Tribunal shall be broadly representative of the people of Ontario with particular regard to income, property tenure, geographical distribution and sex, and every member on his appointment, and at the beginning of every year thereafter, shall file for public inspection with the Secretary of the Tribunal a full statement of the property interests, investments, and paid directorships or positions held by himself and his immediate family. Constitution of membership of Tribunal

(9) Three members of the Tribunal constitute a quorum and may exercise all the powers of the Tribunal. Quorum

(10) The Chairman shall have general supervision and direction over the conduct of the affairs of the Tribunal, and shall arrange the sittings of the Tribunal and assign members to conduct hearings as circumstances require. Chairman to have direction and supervision

(11) The Tribunal may retain experts to advise it in respect of any particular matter coming before it or in respect of general matters respecting rental accommodation and landlord and tenant relations. Retention of experts

(12) The Tribunal shall prepare and periodically publish a summary of its decisions and the reasons therefor, and a file of these summaries shall be maintained accessible to the public at every rent regulation office. Publishing of decision of Tribunal

19. Appeals under this Act shall be made by written notice and the Tribunal shall send a copy of the notice of appeal to all interested parties and shall fix a hearing date and place in or near the municipality where the rented dwelling is located and shall hold its hearing within fifteen days of receipt of the appeal. Appeals to be made by written notice

20.—(1) On any appeal, the Tribunal shall deliver its decision within thirty days of the hearing and no eviction, rent increase, or other change affecting the status of the tenant or the landlord shall be made until the decision of the Tribunal has been notified to both parties by registered mail. Decision in 30 days

(2) The Tribunal shall have the power to order payments by a landlord to a tenant in case of breach of covenant in the lease or overpayment of rent, and shall have the power to order payment of rent due or owing by a tenant to a landlord. Tribunal can order payments

PART V

SECURITY OF TENURE

Security
of tenure

21. In order to guarantee security of tenure to tenants who fulfill their normal obligations,

- (a) no order of eviction shall be enforceable without the approval of the Tribunal; and
- (b) every lease of a residential premises for a fixed period shall be, at the expiry of its term, extended of right as a month-to-month tenancy unless the parties agree to a different extension; and
- (c) a lessor wishing to terminate a lease without the agreement of the lessee must give notice of the grounds for the termination in writing and seek a hearing from the Tribunal no less than thirty days before the expiry of the lease.

Grounds for
eviction or
termination

22.—(1) No eviction or termination of lease shall be approved by the Tribunal except on the grounds of,

- (a) wilful non-payment of rent for more than fifteen days after the expiry of the rent period for which the rent was due;
- (b) persistent and undue nuisance created by the tenant to neighbours or to the community;
- (c) proven evidence that the tenant is using the premises for an illegal activity;
- (d) permanent overcrowding of the premises according to the standards set out or accepted by the landlord at the commencement of the tenancy;
- (e) undue damage to the rented property or its environs caused by the tenant or other occupants of the rented premises;
- (f) need demonstrated, by the landlord or a relative of the landlord, to use the premises provided that this right may be exercised no more than once every five years.

Tribunal
not
bound

(2) The Tribunal shall not be bound to approve an eviction where these grounds exist and may order alternative arrangements to settle the dispute between landlord and tenant.

23. A change of use or intention to demolish a rented premises is not grounds for eviction or termination of lease, but the Tribunal may approve an eviction or termination of lease if satisfactory alternative arrangements have been made by way of compensation or by way of finding alternative accommodation for the tenant and where an eviction or termination of lease is granted under this section, the Tribunal shall order the landlord to make those alternative arrangements for the tenant which it considers to be satisfactory.

Change of use or demolition of premises

24. Where a lessee does not wish to extend a lease he shall give notice in writing to the lessor not less than thirty days before the expiry of the term of the lease and the landlord shall not oppose a non-extension of a lease under this section.

Lessee not wishing to extend a lease

25. Where a lessor does not wish to extend a lease or wishes to increase the rent or change any other condition for the renewal or extension of a lease, he shall give notice in writing to the lessee at least thirty days before any expiry of the term of the lease, and shall inform the tenant of his right to appeal in a form as prescribed in the regulation.

Lessor not wishing to extend a lease

26. A lessee wishing to remain on the premises at the termination of a current lease may make an opposition to the notice of non-extension within fifteen days of the notice or, in exceptional circumstances, after the expiry of fifteen days of the notice.

Remaining on premises after notice of non-extension

27. Where a notice of termination of a lease has been opposed, the termination shall take effect only after application to the Tribunal and after its approval is granted.

Termination by Tribunal

28. Any period of notice or of appeal established under this Act may be extended by the Tribunal when the extension is justified by exceptional circumstances.

Extension of time for notice or appeal

29.—(1) Any landlord in a municipality covered by this Act who evicts a tenant or terminates a lease contrary to the provisions of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

Offence

(2) Except for a landlord referred to in subsection 1, any person who knowingly contravenes a section of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000.

Idem

(3) For the purposes of this section, the Tribunal shall have all the powers of a provincial court.

Tribunal has power of provincial court

30. For the purposes of this Act, any group of tenants renting dwellings from the same landlord may, by a signed

Right of a group of tenants to act as a single tenant

declaration signed by each tenant in the group and filed with the rent regulation officer in the municipality, have all the powers and responsibilities of an individual tenant, including the right to negotiate with a landlord and the right to make applications or appeals as a group to a rent regulation officer or to the Tribunal.

Regulations **31.** The Lieutenant Governor in Council may make regulations,

(a) prescribing the form of notice for appeals provided in this Act; and

(b) prescribing standard forms of leases.

**Commence-
ment** **32.** This Act comes into force on the 30th day of June, 1973.

Short title **33.** This Act may be cited as *The Ontario Rent Control and Security of Tenure Act, 1973*.

An Act to provide for
Rent Control and Security
of Tenure

1st Reading

June 20th, 1973

2nd Reading

3rd Reading

MR. CASSIDY

(Private Member's Bill)

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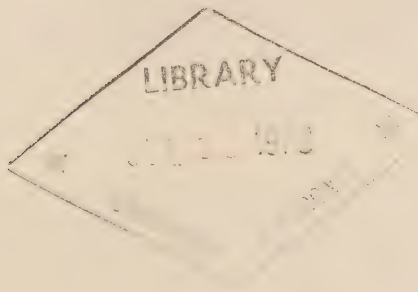
BILL 174

Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act to amend The Succession Duty Act

THE HON. J. WHITE
Treasurer of Ontario and Minister
of Economics and Intergovernmental Affairs



TORONTO

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EXPLANATORY NOTES

This Bill removes all duty from property and dispositions dutiable to the spouse of the deceased under *The Succession Duty Act*. The Bill also increases the exemptions available for dependent children under age twenty-six when the deceased is survived by a spouse, and for orphans and infirm children who were dependent on the deceased. As a consequence of these increases for the spouse and dependent children, section 5 (1) (h) of the Act, which exempted certain non-commutable annuities, is being repealed. In practice, the exemption for non-commutable annuities benefited the spouse and dependent children almost exclusively.

Amendments are also proposed that will reduce the requirement for the Minister's consent to open and remove contents from safety deposit boxes. In addition, the penalty for late filing of succession duty returns will be made permissive in place of the present mandatory penalty.

In addition, provisions are added to the Act that will forgive duty payable on farm property passing to members of a farmer's family ordinarily resident in Canada. Proposed amendments will also allow the duty on shares owned by the deceased in a family business controlled by Canadian residents to be paid either in instalments or by transferring to the Treasurer of Ontario shares in the family business.

SECTION 1. The repealed provision formerly exempted from duty non-commutable annuities up to \$10,000 a year in the aggregate that were payable to the spouse or to dependent children, parents, brothers and sisters of the deceased. In lieu of this exemption, increased exemptions are given in section 2 of the Bill to dependent children of the deceased, and a complete exemption is given to his spouse.

SECTION 2. This section completely exempts a spouse from the payment of duty, and raises the exemptions for dependent children, where the deceased is survived by a spouse, from \$15,000 to \$2,000 for each full year that the child is under age twenty-six. Where there is no surviving spouse, a dependent child under age twenty-six has an exemption of \$4,000 for each full year that he is under age twenty-six. Children over that age who are dependent by reason of mental or physical infirmity will be entitled to an exemption of \$4,000 for each full year that they are under age seventy-one at the death of the deceased. Where the benefits taken by a dependent child exceed his individual dependant allowance, he will be entitled to an individual dependant reduction from duty otherwise payable by him of one-tenth of his individual dependant allowance. In view of these more generous exemptions for dependants, the Bill repeals the "dependants' allowance" and the "increased individual dependant reduction". The new exemptions will now depend on benefits actually taken by the dependant entitled to the exemption.

An Act to amend The Succession Duty Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *h* of subsection 1 of section 5 of *The Succession Duty Act*,
being chapter 449 of the Revised Statutes of Ontario, 1970,
as re-enacted by the Statutes of Ontario, 1971, chapter 15,
section 1, is repealed. s. 5 (1) (h),
repealed
- 2.—(1) Subsection 2 of section 7 of the said Act is repealed s. 7 (2),
re-enacted
and the following substituted therefor:

(2) Notwithstanding subsection 1, no duty shall be levied
on any property situate in Ontario passing on the death of
the deceased to or for the benefit of a dependant or on him
where the sum of the value of property passing on the
death of the deceased to the dependant or for his benefit
and of the value of all dispositions to him that do not come
within clause *g* of subsection 1 of section 5 does not exceed
his individual dependant allowance. No duty to
be levied on a
dependant
under certain
circum-
stances

- (2) Subsection 3 of the said section 7 is amended by striking s. 7 (3),
amended
out “dependant” in the second line and inserting in lieu
thereof “dependent child” and by striking out “or of his
increased individual dependant reduction, if the greater”
in the tenth, eleventh and twelfth lines.
- (3) Subsection 4 of the said section 7 is repealed and the s. 7 (4),
re-enacted
following substituted therefor:

(4) After the reduction provided for in subsection 3 is made,
the duty levied on property passing on the death of the deceased
to or for the benefit of a dependant and on him shall be
reduced to an amount equal to one-half of the amount by which
the sum of the value of the property passing on the death of
the deceased to or for the benefit of such dependant and
of all dispositions to him, that do not come within clause *g*
of subsection 1 of section 5, exceeds his individual dependant
allowance. Duty levied
on a
dependant
to be
reduced-
notch clause

s. 7 (11) (b),
repealed

- (4) Clause *b* of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2, is repealed.

s. 7 (11) (c),
re-enacted

- (5) Clause *c* of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, is repealed and the following substituted therefor:

(c) “dependent child” means,

(i) a legitimate child of the deceased,

(ii) a person adopted by the deceased, or

(iii) a person to whom the deceased or the spouse of the deceased stood *in loco parentis* during the infancy of such person,

who, at the time of the death of the deceased, was under twenty-six years of age or was dependent upon the deceased or the spouse of the deceased or both for financial support by reason of any permanent mental or physical infirmity rendering that person incapable ordinarily of pursuing any substantial gainful occupation.

s. 7 (11) (d, e),
re-enacted

- (6) Clauses *d* and *e* of subsection 11 of the said section 7 are repealed and the following substituted therefor:

(d) “individual dependant allowance” means,

(i) in the case of the spouse of the deceased, an amount equal to the sum of the value of the property passing on the death of the deceased to or for the benefit of the spouse, plus the value of all dispositions to such spouse that do not come within clause *g* of subsection 1 of section 5,

(ii) in the case of a dependent child where the deceased is survived by a spouse and where the dependent child is, at the death of the deceased, under the age of twenty-six years, an amount equal to the product of multiplying \$2,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become twenty-six years of age,

- (iii) in the case of a dependent child where the deceased is not survived by a spouse and where the dependent child is, at the death of the deceased, under the age of twenty-six years, an amount equal to the product of multiplying \$4,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become twenty-six years of age,
- (iv) in the case of a dependent child who, at the death of the deceased, is dependent on the deceased or the spouse of the deceased or both by reason of any permanent mental or physical infirmity, an amount in addition to any individual dependant allowance to which such dependent child is entitled under sub-clause ii or iii equal to,

A. where the deceased dies after the twenty-fifth birthday of the dependent child, the product of multiplying \$4,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become seventy-one years of age, or

B. where the deceased dies on or before the dependent child's twenty-fifth birthday, the product of multiplying \$4,000 by the number of full years in the period commencing on the day of the anniversary of the death of the deceased that next precedes the day following the day on which the dependent child will, if ever, become twenty-six years of age and ending on the day on which the dependent child will, if ever, become seventy-one years of age;

- (e) "individual dependant reduction" means an amount equal to one-tenth of the individual dependant allowance applicable to a dependent child with respect to whom the expression is being used.

- (7) Clause *f* of subsection 11 of the said section 7, as ^{s. 7 (11) (f),} amended by the Statutes of Ontario, 1971 (2nd Session), ^{repealed} chapter 3, section 2, is repealed.

s. 7 (11) (g),
repealed

- (8) Clause *g* of subsection 11 of the said section 7, as re-enacted by the Statutes of Ontario, 1971, chapter 15, section 2, and amended by 1971 (2nd Session), chapter 3, section 2, is repealed.

s. 11 (1),
amended

- 3.—(1) Subsection 1 of section 11 of the said Act is amended by striking out “any member of the family of the deceased either alone or jointly with any person or where the deceased or any member of his family had access or right of access, directly or indirectly, to any such safety deposit box or other repository” in the eighth, ninth, tenth, eleventh and twelfth lines and by inserting in lieu thereof “the spouse of the deceased”.

s. 11,
amended

- (2) Section 11 of the said Act is amended by adding thereto the following subsection:

Exception

(3) Notwithstanding subsection 1, there may be removed from any repository mentioned in subsection 1 at any time without the consent of the Minister or his representative, the will or other testamentary writing of the deceased, any birth certificate or marriage licence, any title deed, lease, agreement for sale or deed of mortgage or hypothec relating to real property, or any deed, record or other document required in connection with the burial of the deceased.

s. 13 (4),
amended

4. Subsection 4 of section 13 of the said Act is amended by striking out “shall” in the second line and inserting in lieu thereof “may be required to”.

ss. 17a, 17b,
enacted

5. The said Act is amended by adding thereto the following sections:

Interpre-
tation

17a.—(1) In this section,

(a) “farming” includes tillage of the soil, the breeding, raising or grazing of livestock of all kinds, the raising of poultry and the production of poultry products, fur farming, dairy farming, fruit growing, the growing of food for human consumption or for the feeding of livestock, and the keeping of bees;

(b) “farming assets” means,

(i) land, buildings, equipment, machinery and livestock that are used chiefly in farming,

(ii) the building in which a person resides who is engaged in farming if that building is on land that is or is contiguous to land used by that person in farming, and

SECTION 3.—Subsection 1 repeals provisions closing the safety deposit boxes of members of the family of the deceased on his death. Only those safety deposit boxes in the name of the deceased, alone or jointly, or in the name of his spouse will require the Minister's consent before they can be opened.

Subsection 2 allows the removal, without consent, of certain legal papers from a safety deposit box after the death of the deceased.

SECTION 4. The penalty for late filing of succession duty returns will no longer be mandatory under the Act; its imposition will become discretionary.

SECTION 5. Adds sections 17*a* and 17*b* to the Act.

The new section 17*a* provides for the cancellation of duty on farm property that passes to members of the family of the deceased ordinarily resident in Canada where the land continues to be farmed by the family. The duty is cancelled in equal amounts over the twenty-five years following the death of the deceased, but if farming ceases to be carried on by the family on the farm property, the remaining duty that has not been cancelled as of that date will become payable. In addition, subsection 11 of the new section 17*a* reduces the value of farming assets liable to duty by the lesser of their dutiable value or \$50,000 where such assets are dispositions that are included for duty or are certain types of property deemed to pass on the death of the deceased. This reduction will avoid the inclusion for duty of the value of a once-in-a-lifetime gift of farming assets, and will grant an equivalent reduction where the mode of making the gift of farming assets results in its inclusion for duty in the estate of the deceased.

The new section 17*b* allows the duty on shares of an incorporated business controlled by the family of the deceased ordinarily resident in Canada to be paid in instalments over the seven years following the death of the deceased, or to be paid in shares of the business transferred to the Treasurer of Ontario. The shares will be the property of the Crown, but cannot be sold until the members of the family of the deceased have been given the opportunity to buy them.

- (iii) shares in a farming corporation ;
- (c) “farming corporation” means a corporation,
- (i) every share of which that confers on the holder thereof the right to vote is, at the date of the death of the deceased and at all times following that death during which any forgivable duty that might be reduced and discharged by the operation of this section remains owing, owned either by the deceased or by a member of his family ordinarily resident in Canada,
 - (ii) 95 per cent of the assets of which are farming assets, and
 - (iii) which continues to carry on the business of farming in Ontario through the employment of members of the family of the deceased actually engaged in the operation of the farm ;
- (d) “farming land” means those farming assets that are land that passes on the death of the deceased or that is included in a disposition made by him that does not come within clause *g* of subsection 1 of section 5, or that is owned by a farming corporation that uses it for farming ;
- (e) “forgivable duty” means the duty that is levied by this Act on farming assets passing on the death of the deceased to a member of the family of the deceased ordinarily resident in Canada or to a farm corporation, and includes duty levied on or payable by any member of the family of the deceased ordinarily resident in Canada or any farming corporation, with respect to farming assets, to whom farming assets pass on the death of the deceased or to whom the deceased made a disposition of farming assets that does not come within clause *g* of subsection 1 of section 5, but where the whole of the duty payable as a result of the death of the deceased by a member of the family of the deceased ordinarily resident in Canada or by a farming corporation is not forgivable duty as hereinbefore defined, “forgivable duty” means the proportion of the total duty payable by that person that the value of the farming assets that are dutiable to him bears to the dutiable value of all property passing to him on the death of the

deceased and of all dispositions to him from the deceased that do not come within clause *g* of subsection 1 of section 5;

- (f) “member of the family”, in addition to its meaning in clause *k* of section 1, includes such people as would be members of the family of the deceased if, at the time when the expression is being applied to them, they would have been members of the family of the deceased within clause *k* of section 1 had the deceased then been living.

Discharge of
forgivable
duty

(2) Where the property passing on the death of the deceased or any disposition made by him that does not come within clause *g* of subsection 1 of section 5 includes farming assets, the forgivable duty referable to those farming assets is payable only in accordance with this section and shall be reduced and discharged as hereinafter provided and upon the conditions hereinafter set forth.

Interest

(3) On all forgivable duty that is neither paid nor discharged by operation of this section, interest is payable at the rate applicable to duty payable under subsection 1 of section 16.

Forgivable
duty to be
discharged

(4) Subject to subsection 10, the forgivable duty shall be reduced and discharged by an amount equal to 1/25 of that forgivable duty on each of the first anniversary of the death of the deceased and the 24 next succeeding anniversaries of his death, and all interest owing at the time of any reduction and discharge of forgivable duty is cancelled by the reduction of duty, provided that, during the year preceding any reduction or discharge of forgivable duty, the farming land has been used in farming by members of the family of the deceased, either as the owners thereof or as the employees of a farming corporation that owns such farming land, who were ordinarily resident in Canada throughout that year and whose chief occupation was farming throughout that year.

Forgivable
duty, when
payable

(5) If, while any part of the forgivable duty remains unpaid and undischarged,

- (a) farming ceases to be carried on by members of the family of the deceased on any part of the farming land; or
- (b) the farming land or any part of it ceases to be owned by members of the family of the deceased or by a farming corporation,

the part of the forgivable duty that is unpaid and undischarged at the happening of any event referred to in clause *a* or *b* of this subsection is, subject to subsection 10, payable immediately upon the happening of any of the said events, and until fully paid bears interest at the rate applicable to duty payable under subsection 1 of section 16.

(6) Subject to subsection 10, if any event referred to in clause *a* or *b* of subsection 5 occurs before the second anniversary of the date of the death of the deceased, all the forgivable duty owing by the person with respect to whom any such event occurred is immediately payable with interest as hereinbefore provided in this section and notwithstanding that a part of that forgivable duty was discharged by the operation of subsection 4. Exception

(7) For the amount of any forgivable duty from time to time owing on or with respect to farming assets, the Minister has a first lien and charge on all farming assets and farming land notwithstanding that such farming land was not property passing on the death of the deceased, but such first lien and charge on farming land is effective only where notice of the existence of such lien and charge is registered against the farming land in the proper land registry office. First lien and charge

(8) Where farming land owned by a farming corporation has been encumbered after the death of the deceased and before the registration by the Minister of a notice of lien and charge for forgivable duty as provided for in subsection 7, the Minister may, unless he is given priority over the encumbrance, declare that no forgivable duty arises on the death of the deceased, and where such a declaration is made in writing to the farming corporation owning the farming land that has been encumbered, this section does not apply to reduce or discharge the duty owing by any person, and the duty is payable in accordance with section 16. Encumbrance of farming land

(9) The Minister may from time to time require any person to furnish to him information on any matter that, in the opinion of the Minister, is relevant in establishing that all the conditions laid down by this section have been and continue to be fulfilled by all persons by whom forgivable duty is payable, and where a person who should furnish such information as the Minister requires refuses so to do, the Minister may demand from that person the forgivable duty owing by him that is then unpaid and undischarged, and upon the demand in writing being made, the forgivable duty owing is forthwith payable with interest at the rate applicable to duty payable under subsection 1 of section 16, but no demand under this subsection shall be made until the person Information to be furnished to Minister

thereby affected has been afforded an opportunity to appear before the Minister to show why the information was not provided by him as required.

Payment in
lieu of
cancellation
of forgivable
duty

(10) Where the occurrence of any event referred to in clause *a* or *b* of subsection 5 results in the immediate payment of any forgivable duty, the Minister may accept in lieu of such immediate payment the whole or any part of such sum as he considers to have been realized as a result of the occurrence of any of the said events, and upon his accepting such payment, this section continues to apply as if the event had not occurred, but any payment so accepted shall be applied to reduce the total amount of forgivable duty payable by the person from whom such payment was accepted, and this section shall thereafter be construed as though the forgivable duty were the amount remaining after the application of such payment accepted by the Minister in accordance with this subsection.

Farming
asset
deduction

(11) Notwithstanding any provision of this Act to the contrary, where farming assets are property deemed to pass on the death of the deceased by subclause *x* of clause *r* of section 1 or are included in a disposition or dispositions that do not come within clause *g* of subsection 1 of section 5, the aggregate and the dutiable value of such farming assets shall, for the purpose of computing the duty imposed by this Act, be reduced by an amount equal to the lesser of,

- (a) the dutiable value of such farming assets before making the reduction required by this subsection; or
- (b) \$50,000.

Interpre-
tation

17*b*.—(1) In this section,

- (a) “eligible corporation” means a company,
 - (i) incorporated under the laws of Canada or a province of Canada,
 - (ii) that carries on in Canada an active commercial business (other than a business of an investment or financial nature that is not the making of loans or the trading or dealing in stocks, bonds, mortgages, bills, notes or other similar property) from which at least 75 per cent of its income is derived, and
 - (iii) more than 50 per cent of the voting shares in which are held at the death of the deceased

by the deceased, the deceased and members of his family ordinarily resident in Canada, or members of the family of the deceased ordinarily resident in Canada;

(b) “family business duty” means,

- (i) the duty levied on shares of an eligible corporation that are property passing on the death of the deceased to a member of the family of the deceased ordinarily resident in Canada, and
- (ii) the duty levied on a member of the family of the deceased ordinarily resident in Canada or payable by him with respect to shares of an eligible corporation that are property passing to him on the death of the deceased or that are included in a disposition to him made by the deceased that does not come within clause g of subsection 1 of section 5, but where family business duty as hereinbefore defined is only part of the duty payable as a result of the death of the deceased by a member of the family of the deceased ordinarily resident in Canada, “family business duty” means the proportion of the total duty payable by that person that the value of the shares in the eligible corporation that are dutiable to him bears to the value of all property passing to him on the death of the deceased and of all dispositions to him from the deceased that do not come within clause g of subsection 1 of section 5.

(2) Where shares of an eligible corporation pass on the death of a deceased to a member of his family ordinarily resident in Canada or are included in a disposition that is made by the deceased to a member of his family ordinarily resident in Canada and that does not come within clause g of subsection 1 of section 5, the family business duty and the interest thereon from time to time owing may, if the person by whom such duty and interest are payable so elects in writing within six months after the death of the deceased, be paid either,

Payment of
family
business
duty

- (a) in equal semi-annual or quarterly instalments commencing on the first anniversary of the death of the deceased and payable over the six years immediately

following the first anniversary of the death of the deceased and so calculated as to discharge all such duty and interest by the payment of the final instalment, but all interest on such duty shall be computed at the rate and from the time applicable to interest on duty payable under subsection 1 of section 16, and no discount shall be allowed for the prepayment of any instalment of such duty and interest; or

- (b) by transferring to the Treasurer the absolute ownership of shares, of a class and quantity acceptable to the Treasurer, in the eligible corporation that have a fair market value at the time of such transfer of not less than the family business duty and interest then owing by the person by whom or on whose account such shares are transferred,

and where a person by whom family business duty is payable does not make the election provided for in this subsection, the family business duty payable by him is payable in accordance with section 16.

Sale of
shares by
Treasurer

(3) Subject to subsections 4, 5, 6 and 7, the Treasurer shall not sell or dispose of any shares transferred to him under clause *b* of subsection 2 unless, within the six months preceding such sale, he has offered the same number and class of shares at the same or a lesser price to the members of the family of the deceased living at the time such offer is made, and the offer has not been accepted by the person to whom it is made or by that person's parent or guardian where that person is a minor.

Offer to
members of
the family

(4) An offer made to comply with subsection 3 shall take into account the number of shares of the class of shares offered for sale that is already owned by members of the family of the deceased ordinarily resident in Canada to whom the offer is made, and the shares of each class shall be offered to each person in such number as will maintain, as nearly as may be between the members of the family of the deceased ordinarily resident in Canada, the ratio of their ownership of shares in the class in question, but no failure to preserve such ratio of ownership prevents or invalidates a sale of any shares sold pursuant to an offer under subsection 3.

Idem

(5) An offer made to comply with subsection 3 shall be open for acceptance for at least thirty days from the day on which it is made, and such offer shall be deemed to be made on the day when it is sent by registered mail to the address of

SECTION. 6. Provides that the amendments made by this Bill will apply in respect of all deaths occurring after April 12, 1973.

the offeree or, if his address is unknown, to such address as, upon reasonable inquiry, appears to the Treasurer to be the offeree's last known address.

(6) Where, in order to comply with subsection 3, an offer Offer to minors is made to a member of the family of the deceased ordinarily resident in Canada who is a minor, the offer may be accepted on the minor's behalf by his parent or guardian, in which case the shares specified in the offer shall be transferred by the Treasurer to the parent or guardian accepting the offer on behalf of the minor and in trust to be transferred to the minor absolutely when he attains his majority.

(7) No provision in the by-laws or articles of association Restrictions on transfer not to apply to sale by Treasurer of an eligible corporation that restricts or prevents the transfer of shares that have been transferred to the Treasurer under clause *b* of subsection 2 is applicable or effective to prevent the Treasurer from selling in accordance with this section any such shares or to prevent the purchaser from the Treasurer from being registered as a shareholder of the eligible corporation or from exercising the rights attaching to the class of shares purchased from the Treasurer.

(8) The Treasurer may in writing delegate to any person Delegation the management and custody of any shares transferred to him under this section and the performance of the powers and duties conferred and imposed upon the Treasurer by this section, and any such delegation may from time to time be altered or revoked by the Treasurer.

6. This Act comes into force on the day it receives Royal Assent, Commencement and application but applies to every case in which duty is imposed by *The Succession Duty Act* as a result of the death of a person dying after the 12th day of April, 1973.
7. This Act may be cited as *The Succession Duty Amendment Act, 1973*. Short title

An Act to amend
The Succession Duty Act

1st Reading

June 20th, 1973

2nd Reading

3rd Reading

THE HON. J. WHITE
Treasurer of Ontario and Minister of
Economics and Intergovernmental Affairs

(Government Bill)

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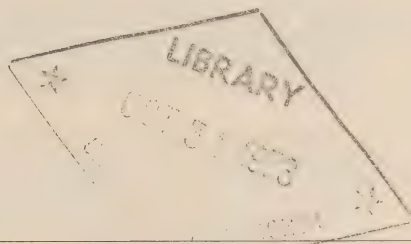
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BILL 174

Government
Publications
Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973.

An Act to amend The Succession Duty Act



THE HON. J. WHITE
Treasurer of Ontario and Minister
of Economics and Intergovernmental Affairs

(Reprinted as amended by the Administration of Justice Committee)

TORONTO

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EXPLANATORY NOTES

This Bill removes all duty from property and dispositions dutiable to the spouse of the deceased under *The Succession Duty Act*. The Bill also increases the exemptions available for dependent children under age twenty-six when the deceased is survived by a spouse, and for orphans and infirm children who were dependent on the deceased. As a consequence of these increases for the spouse and dependent children, section 5 (1) (h) of the Act, which exempted certain non-commutable annuities, is being repealed. In practice, the exemption for non-commutable annuities benefited the spouse and dependent children almost exclusively.

Amendments are also proposed that will reduce the requirement for the Minister's consent to open and remove contents from safety deposit boxes. In addition, the penalty for late filing of succession duty returns will be made permissive in place of the present mandatory penalty.

In addition, provisions are added to the Act that will forgive duty payable on farm property passing to members of a farmer's family ordinarily resident in Canada. Proposed amendments will also allow the duty on shares owned by the deceased in a family business controlled by Canadian residents to be paid either in instalments or by transferring to the Treasurer of Ontario shares in the family business.

SECTION 1. The repealed provision formerly exempted from duty non-commutable annuities up to \$10,000 a year in the aggregate that were payable to the spouse or to dependent children, parents, brothers and sisters of the deceased. In lieu of this exemption, increased exemptions are given in section 2 of the Bill to dependent children of the deceased, and a complete exemption is given to his spouse.

SECTION 2. This section completely exempts a spouse from the payment of duty, and raises the exemptions for dependent children, where the deceased is survived by a spouse, from \$15,000 to \$2,000 for each full year that the child is under age twenty-six. Where there is no surviving spouse, a dependent child under age twenty-six has an exemption of \$4,000 for each full year that he is under age twenty-six. Children over that age who are dependent by reason of mental or physical infirmity will be entitled to an exemption of \$4,000 for each full year that they are under age seventy-one at the death of the deceased. Where the benefits taken by a dependent child exceed his individual dependant allowance, he will be entitled to an individual dependant reduction from duty otherwise payable by him of one-tenth of his individual dependant allowance. In view of these more generous exemptions for dependants, the Bill repeals the "dependants' allowance" and the "increased individual dependant reduction". The new exemptions will now depend on benefits actually taken by the dependant entitled to the exemption.

An Act to amend The Succession Duty Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *h* of subsection 1 of section 5 of *The Succession Duty Act*, <sup>s. 5 (1) (h),
repealed</sup> being chapter 449 of the Revised Statutes of Ontario, 1970 as re-enacted by the Statutes of Ontario, 1971, chapter 15, section 1, is repealed.

- 2.—(1) Subsection 2 of section 7 of the said Act is repealed <sup>s. 7 (2),
re-enacted</sup> and the following substituted therefor:

(2) Notwithstanding subsection 1, no duty shall be levied <sup>No duty to
be levied on a
dependant
under certain
circum-
stances</sup> on any property situate in Ontario passing on the death of the deceased to or for the benefit of a dependant or on him where the sum of the value of property passing on the death of the deceased to the dependant or for his benefit and of the value of all dispositions to him that do not come within clause *g* of subsection 1 of section 5 does not exceed his individual dependant allowance.

- (2) Subsection 3 of the said section 7 is amended by striking <sup>s. 7 (3),
amended</sup> out "dependant" in the second line and inserting in lieu thereof "dependent child" and by striking out "or of his increased individual dependant reduction, if the greater" in the tenth, eleventh and twelfth lines.

- (3) Subsection 4 of the said section 7 is repealed and the <sup>s. 7 (4),
re-enacted</sup> following substituted therefor:

(4) After the reduction provided for in subsection 3 is made, <sup>Duty levied
on a
dependant
to be
reduced-
notch clause</sup> the duty levied on property passing on the death of the deceased to or for the benefit of a dependant and on him shall be reduced to an amount equal to one-half of the amount by which the sum of the value of the property passing on the death of the deceased to or for the benefit of such dependant and of all dispositions to him, that do not come within clause *g* of subsection 1 of section 5, exceeds his individual dependant allowance.

s. 7 (11) (b),
repealed

- (4) Clause *b* of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2, is repealed.

s. 7 (11) (c),
re-enacted

- (5) Clause *c* of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, is repealed and the following substituted therefor:

(c) “dependent child” means,

- (i) a legitimate child of the deceased,
- (ii) a person adopted by the deceased, or
- (iii) a person to whom the deceased or the spouse of the deceased stood *in loco parentis* during the infancy of such person,

who, at the time of the death of the deceased, was under twenty-six years of age or was dependent upon the deceased or the spouse of the deceased or both for financial support by reason of any permanent mental or physical infirmity rendering that person incapable ordinarily of pursuing any substantial gainful occupation.

s. 7 (11) (d, e),
re-enacted

- (6) Clauses *d* and *e* of subsection 11 of the said section 7 are repealed and the following substituted therefor:

(d) “individual dependant allowance” means,

- (i) in the case of the spouse of the deceased, an amount equal to the sum of the value of the property passing on the death of the deceased to or for the benefit of the spouse, plus the value of all dispositions to such spouse that do not come within clause *g* of subsection 1 of section 5,
- (ii) in the case of a dependent child where the deceased is survived by a spouse and where the dependent child is, at the death of the deceased, under the age of twenty-six years, an amount equal to the product of multiplying \$2,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become twenty-six years of age,

- (iii) in the case of a dependent child where the deceased is not survived by a spouse and where the dependent child is, at the death of the deceased, under the age of twenty-six years, an amount equal to the product of multiplying \$4,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become twenty-six years of age,
- (iv) in the case of a dependent child who, at the death of the deceased, is dependent on the deceased or the spouse of the deceased or both by reason of any permanent mental or physical infirmity, an amount in addition to any individual dependant allowance to which such dependent child is entitled under sub-clause ii or iii equal to,

A. where the deceased dies after the twenty-fifth birthday of the dependent child, the product of multiplying \$4,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become seventy-one years of age, or

B. where the deceased dies on or before the dependent child's twenty-fifth birthday, the product of multiplying \$4,000 by the number of full years in the period commencing on the day of the anniversary of the death of the deceased that next precedes the day following the day on which the dependent child will, if ever, become twenty-six years of age and ending on the day on which the dependent child will, if ever, become seventy-one years of age;

- (e) "individual dependant reduction" means an amount equal to one-tenth of the individual dependant allowance applicable to a dependent child with respect to whom the expression is being used.

- (7) Clause *f* of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971 (2nd Session), ^{s. 7 (11) (f), repealed} chapter 3, section 2, is repealed.

s. 7 (11) (g),
repealed

- (8) Clause *g* of subsection 11 of the said section 7, as re-enacted by the Statutes of Ontario, 1971, chapter 15, section 2, and amended by 1971 (2nd Session), chapter 3, section 2, is repealed.

s. 9a (2),
amended

3. Subsection 2 of section 9a of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 17, section 4, is amended by striking out "to the successor" in the sixth line.

s. 11 (1),
amended

- 4.—(1) Subsection 1 of section 11 of the said Act is amended by striking out "any member of the family of the deceased either alone or jointly with any person or where the deceased or any member of his family had access or right of access, directly or indirectly, to any such safety deposit box or other repository" in the eighth, ninth, tenth, eleventh and twelfth lines and by inserting in lieu thereof "the spouse of the deceased".

s. 11,
amended

- (2) Section 11 of the said Act is amended by adding thereto the following subsection:

Exception

(3) Notwithstanding subsection 1, there may be removed from any repository mentioned in subsection 1 at any time without the consent of the Minister or his representative, the will or other testamentary writing of the deceased, any birth certificate or marriage licence, any title deed, lease, agreement for sale or deed of mortgage or hypothec relating to real property, or any deed, record or other document required in connection with the burial of the deceased.

s. 13 (1),
amended

- 5.—(1) Subsection 1 of section 13 of the said Act is amended by striking out "three" in the fourth line and inserting in lieu thereof "six".

s. 13 (4),
amended

- (2) Subsection 4 of the said section 13 is amended by striking out "shall" in the second line and inserting in lieu thereof "may be required to".

ss. 17a, 17b,
enacted

6. The said Act is amended by adding thereto the following sections:

Interpre-
tation

17a.—(1) In this section,

- (a) "farming" includes tillage of the soil, the breeding, raising or grazing of livestock of all kinds, the raising of poultry and the production of poultry products, tur farming, dairy farming, fruit growing, the growing of food for human consumption or for the feeding of livestock, and the keeping of bees;

- (b) "farming assets" means,

SECTION 3. The amendment will permit the payment of a refund to the appropriate person.

SECTION 4. Subsection 1 repeals provisions closing the safety deposit boxes of members of the family of the deceased on his death. Only those safety deposit boxes in the name of the deceased, alone or jointly, or in the name of his spouse will require the Minister's consent before they can be opened.

Subsection 2 allows the removal, without consent, of certain legal papers from a safety deposit box after the death of the deceased.

SECTION 5.—Subsection 1. The time for filing an affidavit re property passing on death is increased from three months to six months.

Subsection 2. The penalty for late filing of succession duty returns will no longer be mandatory under the Act; its imposition will become discretionary.

SECTION 6. Adds sections 17*a* and 17*b* to the Act.

The new section 17*a* provides for the cancellation of duty on farm property that passes to members of the family of the deceased ordinarily resident in Canada where the land continues to be farmed by the family. The duty is cancelled in equal amounts over the twenty-five years following the death of the deceased, but if farming ceases to be carried on by the family on the farm property, the remaining duty that has not been cancelled as of that date will become payable. In addition, subsection 11 of the new section 17*a* reduces the value of farming assets liable to duty by the lesser of their dutiable value or \$50,000 where such assets are dispositions that are included for duty or are certain types of property deemed to pass on the death of the deceased. This reduction will avoid the inclusion for duty of the value of a once-in-a-lifetime gift of farming assets, and will grant an equivalent reduction where the mode of making the gift of farming assets results in its inclusion for duty in the estate of the deceased.

The new section 17*b* allows the duty on shares of an incorporated business controlled by the family of the deceased ordinarily resident in Canada to be paid in instalments over the seven years following the death of the deceased, or to be paid in shares of the business transferred to the Treasurer of Ontario. The shares will be the property of the Crown, but cannot be sold until the members of the family of the deceased have been given the opportunity to buy them.

- (i) land, buildings, equipment, machinery and livestock that are used chiefly in farming,
- (ii) any right or licence granted or issued under any Act of the Legislature that permits or regulates the production or sale of any commodity or thing produced, raised or grown through farming,
- (iii) the building in which a person resides who is engaged in farming if that building is on land that is or is contiguous to land used by that person in farming, and
- (iv) shares in a farming corporation;

(c) "farming corporation" means a corporation,

- (i) every share of which that confers on the holder thereof the right to vote is, at the date of the death of the deceased and at all times following that death during which any forgivable duty that might be reduced and discharged by the operation of this section remains owing, owned either by the deceased or by a member of his family ordinarily resident in Canada,
- (ii) 95 per cent of the assets of which are farming assets, and
- (iii) which continues to carry on the business of farming in Ontario through the employment of members of the family of the deceased actually engaged in the operation of the farm;

(d) "farming land" means those farming assets that are land that passes on the death of the deceased or that is included in a disposition made by him that does not come within clause g of subsection 1 of section 5, or that is owned by a farming corporation that uses it for farming;

(e) "forgivable duty" means the duty that is levied by this Act on farming assets passing on the death of the deceased to a member of the family of the deceased ordinarily resident in Canada or to a farm corporation, and includes duty levied on or payable by any member of the family of the deceased

ordinarily resident in Canada or any farming corporation, with respect to farming assets, to whom farming assets pass on the death of the deceased or to whom the deceased made a disposition of farming assets that does not come within clause *g* of subsection 1 of section 5, but where the whole of the duty payable as a result of the death of the deceased by a member of the family of the deceased ordinarily resident in Canada or by a farming corporation is not forgivable duty as hereinbefore defined, "forgivable duty" means the proportion of the total duty payable by that person that the value of the farming assets that are dutiable to him bears to the dutiable value of all property passing to him on the death of the deceased and of all dispositions to him from the deceased that do not come within clause *g* of subsection 1 of section 5;

- (f) "member of the family", in addition to its meaning in clause *k* of section 1, includes such people as would be members of the family of the deceased if, at the time when the expression is being applied to them, they would have been members of the family of the deceased within clause *k* of section 1 had the deceased then been living.

Discharge of
forgivable
duty

(2) Where the property passing on the death of the deceased or any disposition made by him that does not come within clause *g* of subsection 1 of section 5 includes farming assets, the forgivable duty referable to those farming assets is payable only in accordance with this section and shall be reduced and discharged as hereinafter provided and upon the conditions hereinafter set forth.

Interest

(3) On all forgivable duty that is neither paid nor discharged by operation of this section, interest is payable at the rate applicable to duty payable under subsection 1 of section 16.

Forgivable
duty to be
discharged

(4) Subject to subsection 10, the forgivable duty shall be reduced and discharged by an amount equal to $1/25$ of that forgivable duty on each of the first anniversary of the death of the deceased and the 24 next succeeding anniversaries of his death, and all interest owing at the time of any reduction and discharge of forgivable duty is cancelled by the reduction of duty, provided that, during the year preceding any reduction or discharge of forgivable duty, the farming land has been used in farming by members of the family of the deceased, either as the owners thereof

or as the employees of a farming corporation that owns such farming land, who were ordinarily resident in Canada throughout that year.

(5) If, while any part of the forgivable duty remains unpaid and undischarged, Forgivable duty, when payable

- (a) farming ceases to be carried on by members of the family of the deceased on any part of the farming land; or
- (b) the farming land or any part of it ceases to be owned by members of the family of the deceased or by a farming corporation,

the part of the forgivable duty that is unpaid and undischarged at the happening of any event referred to in clause *a* or *b* of this subsection is, subject to subsection 10, payable immediately upon the happening of any of the said events, and until fully paid bears interest at the rate applicable to duty payable under subsection 1 of section 16.

(6) Subject to subsection 10, if any event referred to in clause *a* or *b* of subsection 5 occurs before the second anniversary of the date of the death of the deceased, all the forgivable duty owing by the person with respect to whom any such event occurred is immediately payable with interest as hereinbefore provided in this section and notwithstanding that a part of that forgivable duty was discharged by the operation of subsection 4. Exception

(7) For the amount of any forgivable duty from time to time owing on or with respect to farming assets, the Minister has a first lien and charge on all farming land notwithstanding that such farming land was not property passing on the death of the deceased, but such first lien and charge on farming land is effective only where notice of the existence of such lien and charge is registered against the farming land in the proper land registry office. First lien and charge

(8) Where farming land owned by a farming corporation has been encumbered after the death of the deceased and before the registration by the Minister of a notice of lien and charge for forgivable duty as provided for in subsection 7, the Minister may, unless he is given priority over the encumbrance, declare that no forgivable duty arises on the death of the deceased, and where such a declaration is made in writing to the farming corporation owning the farming land that has been encumbered, this section does not apply to reduce or discharge the duty owing by any person, and the duty is payable in accordance with section 16. Encumbrance of farming land

Information
to be
furnished
to Minister

(9) The Minister may from time to time require any person to furnish to him information on any matter that, in the opinion of the Minister, is relevant in establishing that all the conditions laid down by this section have been and continue to be fulfilled by all persons by whom forgivable duty is payable, and where a person who should furnish such information as the Minister requires refuses so to do, the Minister may demand from that person the forgivable duty owing by him that is then unpaid and undischarged, and upon the demand in writing being made, the forgivable duty owing is forthwith payable with interest at the rate applicable to duty payable under subsection 1 of section 16, but no demand under this subsection shall be made until the person thereby affected has been afforded an opportunity to appear before the Minister to show why the information was not provided by him as required.

Payment in
lieu of
cancellation
of forgivable
duty

(10) Where the occurrence of any event referred to in clause *a* or *b* of subsection 5 results in the immediate payment of any forgivable duty, the Minister may accept in lieu of such immediate payment the whole or any part of such sum as he considers to have been realized as a result of the occurrence of any of the said events, and upon his accepting such payment, this section continues to apply as if the event had not occurred, but any payment so accepted shall be applied to reduce the total amount of forgivable duty payable by the person from whom such payment was accepted, and this section shall thereafter be construed as though the forgivable duty were the amount remaining after the application of such payment accepted by the Minister in accordance with this subsection.

Farming
asset
deduction

(11) Notwithstanding any provision of this Act to the contrary, where farming assets are property deemed to pass on the death of the deceased by subclause *x* of clause *r* of section 1 or are included in a disposition or dispositions that do not come within clause *g* of subsection 1 of section 5, the aggregate and the dutiable value of such farming assets shall, for the purpose of computing the duty imposed by this Act, be reduced by an amount equal to the lesser of,

- (a) the dutiable value of such farming assets before making the reduction required by this subsection; or
- (b) \$50,000.

Interpre-
tation

17*b*.—(1) In this section,

- (a) “eligible corporation” means a company,

- (i) incorporated under the laws of Canada or a province of Canada,
- (ii) that carries on in Canada an active commercial business (other than a business of an investment or financial nature that is not the making of loans or the trading or dealing in stocks, bonds, mortgages, bills, notes or other similar property) from which at least 75 per cent of its income is derived, and
- (iii) more than 50 per cent of the voting shares in which are held at the death of the deceased by the deceased, the deceased and members of his family ordinarily resident in Canada, or members of the family of the deceased ordinarily resident in Canada;

(b) “family business duty” means,

- (i) the duty levied on shares of an eligible corporation that are property passing on the death of the deceased to a member of the family of the deceased ordinarily resident in Canada, and
- (ii) the duty levied on a member of the family of the deceased ordinarily resident in Canada or payable by him with respect to shares of an eligible corporation that are property passing to him on the death of the deceased or that are included in a disposition to him made by the deceased that does not come within clause *g* of subsection 1 of section 5, but where family business duty as hereinbefore defined is only part of the duty payable as a result of the death of the deceased by a member of the family of the deceased ordinarily resident in Canada, “family business duty” means the proportion of the total duty payable by that person that the value of the shares in the eligible corporation that are dutiable to him bears to the value of all property passing to him on the death of the deceased and of all dispositions to him from the deceased that do not come within clause *g* of subsection 1 of section 5.

(2) Where shares of an eligible corporation pass on the death of a deceased to a member of his family ordinarily resident in Canada or are included in a disposition that is

Payment of
family
business
duty

made by the deceased to a member of his family ordinarily resident in Canada and that does not come within clause *g* of subsection 1 of section 5, the family business duty and the interest thereon from time to time owing may, if the person by whom such duty and interest are payable so elects in writing within six months after the death of the deceased, be paid either,

- (a) in equal semi-annual or quarterly instalments commencing on the first anniversary of the death of the deceased and payable over the six years immediately following the first anniversary of the death of the deceased and so calculated as to discharge all such duty and interest by the payment of the final instalment, but all interest on such duty shall be computed at the rate and from the time applicable to interest on duty payable under subsection 1 of section 16, and no discount shall be allowed for the prepayment of any instalment of such duty and interest; or
- (b) by transferring to the Treasurer the absolute ownership of shares, of a class and quantity acceptable to the Treasurer, in the eligible corporation that have a fair market value at the time of such transfer of not less than the family business duty and interest then owing by the person by whom or on whose account such shares are transferred,

and where a person by whom family business duty is payable does not make the election provided for in this subsection, the family business duty payable by him is payable in accordance with section 16.

Sale of
shares by
Treasurer

(3) Subject to subsections 4, 5, 6 and 7, the Treasurer shall not sell or dispose of any shares transferred to him under clause *b* of subsection 2 unless, within the six months preceding such sale, he has offered the same number and class of shares at the same or a lesser price to the members of the family of the deceased living at the time such offer is made, and the offer has not been accepted by the person to whom it is made or by that person's parent or guardian where that person is a minor.

Offer to
members of
the family

(4) An offer made to comply with subsection 3 shall take into account the number of shares of the class of shares offered for sale that is already owned by members of the family of the deceased ordinarily resident in Canada to whom the offer is made, and the shares of each class shall be offered

SECTION 7. Provides that the amendments made by this Bill will apply in respect of all deaths occurring after April 12, 1973.

to each person in such number as will maintain, as nearly as may be between the members of the family of the deceased ordinarily resident in Canada, the ratio of their ownership of shares in the class in question, but no failure to preserve such ratio of ownership prevents or invalidates a sale of any shares sold pursuant to an offer under subsection 3.

(5) An offer made to comply with subsection 3 shall be open ^{Idem} for acceptance for at least thirty days from the day on which it is made, and such offer shall be deemed to be made on the day when it is sent by registered mail to the address of the offeree or, if his address is unknown, to such address as, upon reasonable inquiry, appears to the Treasurer to be the offeree's last known address.

(6) Where, in order to comply with subsection 3, an offer ^{Offer to minors} is made to a member of the family of the deceased ordinarily resident in Canada who is a minor, the offer may be accepted on the minor's behalf by his parent or guardian, in which case the shares specified in the offer shall be transferred by the Treasurer to the parent or guardian accepting the offer on behalf of the minor and in trust to be transferred to the minor absolutely when he attains his majority.

(7) No provision in the by-laws or articles of association ^{Restrictions on transfer not to apply to sale by Treasurer} of an eligible corporation that restricts or prevents the transfer of shares that have been transferred to the Treasurer under clause *b* of subsection 2 is applicable or effective to prevent the Treasurer from selling in accordance with this section any such shares or to prevent the purchaser from the Treasurer from being registered as a shareholder of the eligible corporation or from exercising the rights attaching to the class of shares purchased from the Treasurer.

(8) The Treasurer may in writing delegate to any person ^{Delegation} the management and custody of any shares transferred to him under this section and the performance of the powers and duties conferred and imposed upon the Treasurer by this section, and any such delegation may from time to time be altered or revoked by the Treasurer.

7. This Act comes into force on the day it receives Royal Assent, ^{Commencement and application} but applies to every case in which duty is imposed by *The Succession Duty Act* as a result of the death of a person dying after the 12th day of April, 1973.

8. This Act may be cited as *The Succession Duty Amendment Act, 1973*. ^{Short title}

An Act to amend
The Succession Duty Act

1st Reading

June 20th, 1973

2nd Reading

October 16th, 1973

3rd Reading

THE HON. J. WHITE
Treasurer of Ontario and Minister of
Economics and Intergovernmental Affairs

*(Reprinted as amended by the
Administration of Justice Committee)*

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An Act to amend The Succession Duty Act

THE HON. J. WHITE
Treasurer of Ontario and Minister
of Economics and Intergovernmental Affairs

TORONTO

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An Act to amend The Succession Duty Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *h* of subsection 1 of section 5 of *The Succession Duty Act*, ^{s. 5 (1) (*h*), repealed} being chapter 449 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1971, chapter 15, section 1, is repealed.

- 2.—(1) Subsection 2 of section 7 of the said Act is repealed ^{s. 7 (2), re-enacted} and the following substituted therefor:

(2) Notwithstanding subsection 1, no duty shall be levied on any property situate in Ontario passing on the death of the deceased to or for the benefit of a dependant or on him where the sum of the value of property passing on the death of the deceased to the dependant or for his benefit and of the value of all dispositions to him that do not come within clause *g* of subsection 1 of section 5 does not exceed his individual dependant allowance. ^{No duty to be levied on a dependant under certain circumstances}

- (2) Subsection 3 of the said section 7 is amended by striking out “dependant” in the second line and inserting in lieu thereof “dependent child” and by striking out “or of his increased individual dependant reduction, if the greater” in the tenth, eleventh and twelfth lines. ^{s. 7 (3), amended}

- (3) Subsection 4 of the said section 7 is repealed and the following substituted therefor: ^{s. 7 (4), re-enacted}

(4) After the reduction provided for in subsection 3 is made, the duty levied on property passing on the death of the deceased to or for the benefit of a dependant and on him shall be reduced to an amount equal to one-half of the amount by which the sum of the value of the property passing on the death of the deceased to or for the benefit of such dependant and of all dispositions to him, that do not come within clause *g* of subsection 1 of section 5, exceeds his individual dependant allowance. ^{Duty levied on a dependant to be reduced—notch clause}

s. 7 (11) (b),
repealed

- (4) Clause *b* of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2, is repealed.

s. 7 (11) (c),
re-enacted

- (5) Clause *c* of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, is repealed and the following substituted therefor:

(c) "dependent child" means,

(i) a legitimate child of the deceased,

(ii) a person adopted by the deceased, or

(iii) a person to whom the deceased or the spouse of the deceased stood *in loco parentis* during the infancy of such person,

who, at the time of the death of the deceased, was under twenty-six years of age or was dependent upon the deceased or the spouse of the deceased or both for financial support by reason of any permanent mental or physical infirmity rendering that person incapable ordinarily of pursuing any substantial gainful occupation.

s. 7 (11) (d, e),
re-enacted

- (6) Clauses *d* and *e* of subsection 11 of the said section 7 are repealed and the following substituted therefor:

(d) "individual dependant allowance" means,

(i) in the case of the spouse of the deceased, an amount equal to the sum of the value of the property passing on the death of the deceased to or for the benefit of the spouse, plus the value of all dispositions to such spouse that do not come within clause *g* of subsection 1 of section 5,

(ii) in the case of a dependent child where the deceased is survived by a spouse and where the dependent child is, at the death of the deceased, under the age of twenty-six years, an amount equal to the product of multiplying \$2,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become twenty-six years of age,

(iii) in the case of a dependent child where the deceased is not survived by a spouse and where the dependent child is, at the death of the deceased, under the age of twenty-six years, an amount equal to the product of multiplying \$4,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become twenty-six years of age,

(iv) in the case of a dependent child who, at the death of the deceased, is dependent on the deceased or the spouse of the deceased or both by reason of any permanent mental or physical infirmity, an amount in addition to any individual dependant allowance to which such dependent child is entitled under sub-clause ii or iii equal to,

A. where the deceased dies after the twenty-fifth birthday of the dependent child, the product of multiplying \$4,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become seventy-one years of age, or

B. where the deceased dies on or before the dependent child's twenty-fifth birthday, the product of multiplying \$4,000 by the number of full years in the period commencing on the day of the anniversary of the death of the deceased that next precedes the day following the day on which the dependent child will, if ever, become twenty-six years of age and ending on the day on which the dependent child will, if ever, become seventy-one years of age;

(e) "individual dependant reduction" means an amount equal to one-tenth of the individual dependant allowance applicable to a dependent child with respect to whom the expression is being used.

(7) Clause *f* of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2, is repealed. <sup>s. 7 (11) (*f*),
repealed</sup>

s. 7 (11) (g),
repealed

- (8) Clause *g* of subsection 11 of the said section 7, as re-enacted by the Statutes of Ontario, 1971, chapter 15, section 2, and amended by 1971 (2nd Session), chapter 3, section 2, is repealed.

s. 9a (2),
amended

3. Subsection 2 of section 9a of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 17, section 4, is amended by striking out "to the successor" in the sixth line.

s. 11 (1),
amended

- 4.—(1) Subsection 1 of section 11 of the said Act is amended by striking out "any member of the family of the deceased either alone or jointly with any person or where the deceased or any member of his family had access or right of access, directly or indirectly, to any such safety deposit box or other repository" in the eighth, ninth, tenth, eleventh and twelfth lines and by inserting in lieu thereof "the spouse of the deceased".

s. 11,
amended

- (2) Section 11 of the said Act is amended by adding thereto the following subsection:

Exception

(3) Notwithstanding subsection 1, there may be removed from any repository mentioned in subsection 1 at any time without the consent of the Minister or his representative, the will or other testamentary writing of the deceased, any birth certificate or marriage licence, any title deed, lease, agreement for sale or deed of mortgage or hypothec relating to real property, or any deed, record or other document required in connection with the burial of the deceased.

s. 13 (1),
amended

- 5.—(1) Subsection 1 of section 13 of the said Act is amended by striking out "three" in the fourth line and inserting in lieu thereof "six".

s. 13 (4),
amended

- (2) Subsection 4 of the said section 13 is amended by striking out "shall" in the second line and inserting in lieu thereof "may be required to".

ss. 17a, 17b,
enacted

6. The said Act is amended by adding thereto the following sections:

Interpre-
tation

17a.—(1) In this section,

- (a) "farming" includes tillage of the soil, the breeding, raising or grazing of livestock of all kinds, the raising of poultry and the production of poultry products, fur farming, dairy farming, fruit growing, the growing of food for human consumption or for the feeding of livestock, and the keeping of bees;

- (b) "farming assets" means,

- (i) land, buildings, equipment, machinery and livestock that are used chiefly in farming,
 - (ii) any right or licence granted or issued under any Act of the Legislature that permits or regulates the production or sale of any commodity or thing produced, raised or grown through farming,
 - (iii) the building in which a person resides who is engaged in farming if that building is on land that is or is contiguous to land used by that person in farming, and
 - (iv) shares in a farming corporation ;
- (c) “farming corporation” means a corporation,
- (i) every share of which that confers on the holder thereof the right to vote is, at the date of the death of the deceased and at all times following that death during which any forgivable duty that might be reduced and discharged by the operation of this section remains owing, owned either by the deceased or by a member of his family ordinarily resident in Canada,
 - (ii) 95 per cent of the assets of which are farming assets, and
 - (iii) which continues to carry on the business of farming in Ontario through the employment of members of the family of the deceased actually engaged in the operation of the farm ;
- (d) “farming land” means those farming assets that are land that passes on the death of the deceased or that is included in a disposition made by him that does not come within clause *g* of subsection 1 of section 5, or that is owned by a farming corporation that uses it for farming ;
- (e) “forgivable duty” means the duty that is levied by this Act on farming assets passing on the death of the deceased to a member of the family of the deceased ordinarily resident in Canada or to a farm corporation, and includes duty levied on or payable by any member of the family of the deceased

ordinarily resident in Canada or any farming corporation, with respect to farming assets, to whom farming assets pass on the death of the deceased or to whom the deceased made a disposition of farming assets that does not come within clause *g* of subsection 1 of section 5, but where the whole of the duty payable as a result of the death of the deceased by a member of the family of the deceased ordinarily resident in Canada or by a farming corporation is not forgivable duty as hereinbefore defined, "forgivable duty" means the proportion of the total duty payable by that person that the value of the farming assets that are dutiable to him bears to the dutiable value of all property passing to him on the death of the deceased and of all dispositions to him from the deceased that do not come within clause *g* of subsection 1 of section 5;

- (f) "member of the family", in addition to its meaning in clause *k* of section 1, includes such people as would be members of the family of the deceased if, at the time when the expression is being applied to them, they would have been members of the family of the deceased within clause *k* of section 1 had the deceased then been living.

Discharge of
forgivable
duty

(2) Where the property passing on the death of the deceased or any disposition made by him that does not come within clause *g* of subsection 1 of section 5 includes farming assets, the forgivable duty referable to those farming assets is payable only in accordance with this section and shall be reduced and discharged as hereinafter provided and upon the conditions hereinafter set forth.

Interest

(3) On all forgivable duty that is neither paid nor discharged by operation of this section, interest is payable at the rate applicable to duty payable under subsection 1 of section 16.

Forgivable
duty to be
discharged

(4) Subject to subsection 10, the forgivable duty shall be reduced and discharged by an amount equal to 1/25 of that forgivable duty on each of the first anniversary of the death of the deceased and the 24 next succeeding anniversaries of his death, and all interest owing at the time of any reduction and discharge of forgivable duty is cancelled by the reduction of duty, provided that, during the year preceding any reduction or discharge of forgivable duty, the farming land has been used in farming by members of the family of the deceased, either as the owners thereof

or as the employees of a farming corporation that owns such farming land, who were ordinarily resident in Canada throughout that year.

(5) If, while any part of the forgivable duty remains unpaid and undischarged, Forgivable duty, when payable

- (a) farming ceases to be carried on by members of the family of the deceased on any part of the farming land; or
- (b) the farming land or any part of it ceases to be owned by members of the family of the deceased or by a farming corporation,

the part of the forgivable duty that is unpaid and undischarged at the happening of any event referred to in clause *a* or *b* of this subsection is, subject to subsection 10, payable immediately upon the happening of any of the said events, and until fully paid bears interest at the rate applicable to duty payable under subsection 1 of section 16.

(6) Subject to subsection 10, if any event referred to in clause *a* or *b* of subsection 5 occurs before the second anniversary of the date of the death of the deceased, all the forgivable duty owing by the person with respect to whom any such event occurred is immediately payable with interest as hereinbefore provided in this section and notwithstanding that a part of that forgivable duty was discharged by the operation of subsection 4. Exception

(7) For the amount of any forgivable duty from time to time owing on or with respect to farming assets, the Minister has a first lien and charge on all farming land notwithstanding that such farming land was not property passing on the death of the deceased, but such first lien and charge on farming land is effective only where notice of the existence of such lien and charge is registered against the farming land in the proper land registry office. First lien and charge

(8) Where farming land owned by a farming corporation has been encumbered after the death of the deceased and before the registration by the Minister of a notice of lien and charge for forgivable duty as provided for in subsection 7, the Minister may, unless he is given priority over the encumbrance, declare that no forgivable duty arises on the death of the deceased, and where such a declaration is made in writing to the farming corporation owning the farming land that has been encumbered, this section does not apply to reduce or discharge the duty owing by any person, and the duty is payable in accordance with section 16. Encumbrance of farming land

Information
to be
furnished
to Minister

(9) The Minister may from time to time require any person to furnish to him information on any matter that, in the opinion of the Minister, is relevant in establishing that all the conditions laid down by this section have been and continue to be fulfilled by all persons by whom forgivable duty is payable, and where a person who should furnish such information as the Minister requires refuses so to do, the Minister may demand from that person the forgivable duty owing by him that is then unpaid and undischarged, and upon the demand in writing being made, the forgivable duty owing is forthwith payable with interest at the rate applicable to duty payable under subsection 1 of section 16, but no demand under this subsection shall be made until the person thereby affected has been afforded an opportunity to appear before the Minister to show why the information was not provided by him as required.

Payment in
lieu of
cancellation
of forgivable
duty

(10) Where the occurrence of any event referred to in clause *a* or *b* of subsection 5 results in the immediate payment of any forgivable duty, the Minister may accept in lieu of such immediate payment the whole or any part of such sum as he considers to have been realized as a result of the occurrence of any of the said events, and upon his accepting such payment, this section continues to apply as if the event had not occurred, but any payment so accepted shall be applied to reduce the total amount of forgivable duty payable by the person from whom such payment was accepted, and this section shall thereafter be construed as though the forgivable duty were the amount remaining after the application of such payment accepted by the Minister in accordance with this subsection.

Farming
asset
deduction

(11) Notwithstanding any provision of this Act to the contrary, where farming assets are property deemed to pass on the death of the deceased by subclause *x* of clause *r* of section 1 or are included in a disposition or dispositions that do not come within clause *g* of subsection 1 of section 5, the aggregate and the dutiable value of such farming assets shall, for the purpose of computing the duty imposed by this Act, be reduced by an amount equal to the lesser of,

(a) the dutiable value of such farming assets before making the reduction required by this subsection; or

(b) \$50,000.

Interpre-
tation

17b.—(1) In this section,

(a) “eligible corporation” means a company,

- (i) incorporated under the laws of Canada or a province of Canada,
 - (ii) that carries on in Canada an active commercial business (other than a business of an investment or financial nature that is not the making of loans or the trading or dealing in stocks, bonds, mortgages, bills, notes or other similar property) from which at least 75 per cent of its income is derived, and
 - (iii) more than 50 per cent of the voting shares in which are held at the death of the deceased by the deceased, the deceased and members of his family ordinarily resident in Canada, or members of the family of the deceased ordinarily resident in Canada;
- (b) “family business duty” means,
- (i) the duty levied on shares of an eligible corporation that are property passing on the death of the deceased to a member of the family of the deceased ordinarily resident in Canada, and
 - (ii) the duty levied on a member of the family of the deceased ordinarily resident in Canada or payable by him with respect to shares of an eligible corporation that are property passing to him on the death of the deceased or that are included in a disposition to him made by the deceased that does not come within clause *g* of subsection 1 of section 5, but where family business duty as hereinbefore defined is only part of the duty payable as a result of the death of the deceased by a member of the family of the deceased ordinarily resident in Canada, “family business duty” means the proportion of the total duty payable by that person that the value of the shares in the eligible corporation that are dutiable to him bears to the value of all property passing to him on the death of the deceased and of all dispositions to him from the deceased that do not come within clause *g* of subsection 1 of section 5.

(2) Where shares of an eligible corporation pass on the death of a deceased to a member of his family ordinarily resident in Canada or are included in a disposition that is

Payment of
family
business
duty

made by the deceased to a member of his family ordinarily resident in Canada and that does not come within clause *g* of subsection 1 of section 5, the family business duty and the interest thereon from time to time owing may, if the person by whom such duty and interest are payable so elects in writing within six months after the death of the deceased, be paid either,

- (a) in equal semi-annual or quarterly instalments commencing on the first anniversary of the death of the deceased and payable over the six years immediately following the first anniversary of the death of the deceased and so calculated as to discharge all such duty and interest by the payment of the final instalment, but all interest on such duty shall be computed at the rate and from the time applicable to interest on duty payable under subsection 1 of section 16, and no discount shall be allowed for the prepayment of any instalment of such duty and interest; or
- (b) by transferring to the Treasurer the absolute ownership of shares, of a class and quantity acceptable to the Treasurer, in the eligible corporation that have a fair market value at the time of such transfer of not less than the family business duty and interest then owing by the person by whom or on whose account such shares are transferred,

and where a person by whom family business duty is payable does not make the election provided for in this subsection, the family business duty payable by him is payable in accordance with section 16.

Sale of
shares by
Treasurer

(3) Subject to subsections 4, 5, 6 and 7, the Treasurer shall not sell or dispose of any shares transferred to him under clause *b* of subsection 2 unless, within the six months preceding such sale, he has offered the same number and class of shares at the same or a lesser price to the members of the family of the deceased living at the time such offer is made, and the offer has not been accepted by the person to whom it is made or by that person's parent or guardian where that person is a minor.

Offer to
members of
the family

(4) An offer made to comply with subsection 3 shall take into account the number of shares of the class of shares offered for sale that is already owned by members of the family of the deceased ordinarily resident in Canada to whom the offer is made, and the shares of each class shall be offered

to each person in such number as will maintain, as nearly as may be between the members of the family of the deceased ordinarily resident in Canada, the ratio of their ownership of shares in the class in question, but no failure to preserve such ratio of ownership prevents or invalidates a sale of any shares sold pursuant to an offer under subsection 3.

(5) An offer made to comply with subsection 3 shall be open ^{Idem} for acceptance for at least thirty days from the day on which it is made, and such offer shall be deemed to be made on the day when it is sent by registered mail to the address of the offeree or, if his address is unknown, to such address as, upon reasonable inquiry, appears to the Treasurer to be the offeree's last known address.

(6) Where, in order to comply with subsection 3, an offer ^{Offer to minors} is made to a member of the family of the deceased ordinarily resident in Canada who is a minor, the offer may be accepted on the minor's behalf by his parent or guardian, in which case the shares specified in the offer shall be transferred by the Treasurer to the parent or guardian accepting the offer on behalf of the minor and in trust to be transferred to the minor absolutely when he attains his majority.

(7) No provision in the by-laws or articles of association ^{Restrictions on transfer not to apply to sale by Treasurer} of an eligible corporation that restricts or prevents the transfer of shares that have been transferred to the Treasurer under clause *b* of subsection 2 is applicable or effective to prevent the Treasurer from selling in accordance with this section any such shares or to prevent the purchaser from the Treasurer from being registered as a shareholder of the eligible corporation or from exercising the rights attaching to the class of shares purchased from the Treasurer.

(8) The Treasurer may in writing delegate to any person ^{Delegation} the management and custody of any shares transferred to him under this section and the performance of the powers and duties conferred and imposed upon the Treasurer by this section, and any such delegation may from time to time be altered or revoked by the Treasurer.

7. This Act comes into force on the day it receives Royal Assent, ^{Commencement and application} but applies to every case in which duty is imposed by *The Succession Duty Act* as a result of the death of a person dying after the 12th day of April, 1973.
8. This Act may be cited as *The Succession Duty Amendment Act, 1973*. ^{Short title}

An Act to amend
The Succession Duty Act

1st Reading

June 20th, 1973

2nd Reading

October 16th, 1973

3rd Reading

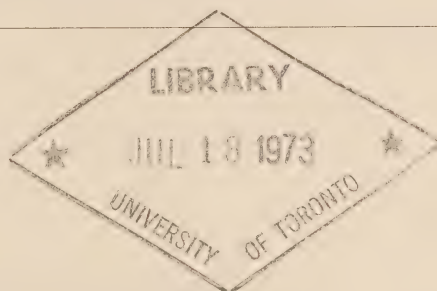
November 8th, 1973

THE HON. J. WHITE
Treasurer of Ontario and Minister of
Economics and Intergovernmental Affairs

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

**An Act to provide for the
Controlling of Hours in Commercial Establishments**

MR. McILVEEN



TORONTO

PRINTED AND PUBLISHED BY THE QUEEN'S PRINTER AND PUBLISHER

EXPLANATORY NOTE

The purpose of the Bill is to provide for uniform holidays and business hours for commercial establishments throughout the Province.

BILL 175

1973

An Act to provide for the Controlling of Hours in Commercial Establishments

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, "commercial establishment" means any establishment or place where goods are sold or offered for sale at retail. ^{Interpre-}
^{tation}

2. The Minister of Consumer and Commercial Relations ^{Administra-}
^{tion} is responsible for the administration of this Act.

3. This Act does not apply to,

^{Excluded}
^{establish-}
^{ments}

(a) a commercial establishment or that part of a commercial establishment whose main activity is the sale of,

- (i) newspapers or periodicals,
- (ii) tobacco or articles required for the use of tobacco,
- (iii) meals,
- (iv) goods to be consumed on the premises,
- (v) pastries or confectionery,
- (vi) pharmaceutical, hygienic or sanitary products,
- (vii) gasoline, motor oil or fuel oil,
- (viii) automobiles, trailers or boats,
- (ix) agricultural machinery, or
- (x) flowers;

R.S.O. 1970,
c. 249

- (b) a government store as defined in *The Liquor Control Act*;
- (c) a commercial establishment or that part of a commercial establishment where goods are sold only as accessory to services rendered in carrying out a contract of lease; or
- (d) a commercial establishment in a tourist or resort community designated in the regulations.

Days when
customer not
admitted

4.—(1) No customer shall be admitted to a commercial establishment on,

- (a) New Year's Day;
- (b) Good Friday;
- (c) Easter Monday;
- (d) Victoria Day;
- (e) Dominion Day;
- (f) Civic Holiday;
- (g) Labour Day;
- (h) Thanksgiving Day;
- (i) Christmas Day; or
- (j) the 26th day of December before 1.00 o'clock in the afternoon.

Idem

(2) Except for those days listed in clauses *b*, *c* and *g*, where any day listed in subsection 1 falls on a Sunday, the day next following is in lieu thereof a day when no customer shall be admitted to a commercial establishment.

Hours when
customer not
admitted

5.—(1) Except from the 11th day of December to the 23rd day of December, no customer shall be admitted to a commercial establishment,

- (a) before 8.00 o'clock in the morning; or
- (b) after 6.00 o'clock in the afternoon,

on Monday, Tuesday or Wednesday.

(2) No customer shall be admitted to a commercial^{Idem} establishment,

(a) before 8.00 o'clock in the morning; or

(b) after 9.00 o'clock in the afternoon,

on a Thursday or Friday.

(3) No customer shall be admitted to a commercial^{Idem} establishment,

(a) before 8.00 o'clock in the morning; or

(b) after 5.00 o'clock in the afternoon,

on a Saturday.

6. No customer shall remain in a commercial establish-^{Time limit}ment for more than thirty minutes after the hour after which^{for} customers it is forbidden to admit customers under section 5.

7. Every person who contravenes any provision of this^{Offence} Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000.

8. The Lieutenant Governor in Council may make regu-^{Regulations}lations designating tourist and resort areas for the purpose of clause *d* of section 3.

9. This Act comes into force on the 1st day of January, 1974.^{Commence-ment}

10. This Act may be cited as *The Commercial Establishment*^{Short title} *Business Hours Act, 1973*.

An Act to provide for the
Controlling of Hours in Commercial
Establishments

1st Reading

June 20th, 1973

2nd Reading

3rd Reading

MR. MCILVEEN

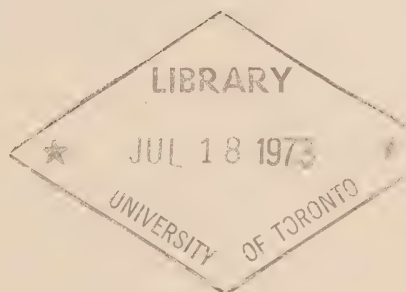
(Private Member's Bill)

BILL 176**Government Bill**

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

**An Act to amend The Ministry of Colleges and
Universities Act, 1971**

THE HON. J. MCNIE
Minister of Colleges and Universities



EXPLANATORY NOTES

SECTION 1.—Amendments to *The Ontario Universities Capital Aid Corporation Act* and *The Ontario Education Capital Aid Corporation Act* have authorized The Ontario Universities Capital Aid Corporation to purchase from municipalities debentures issued for public library purposes.

This is a complementary amendment which gives the Minister the power to determine the amount of any capital expenditure of a municipality for public library purposes that may be financed through The Ontario Universities Capital Aid Corporation.

SECTIONS 2 AND 3.—The amendments authorize the Province to guarantee loans made by chartered banks to post-secondary students.

An Act to amend The Ministry of Colleges and Universities Act, 1971

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 5 of *The Ministry of Colleges and Universities Act, 1971*, ^{s. 5, amended} being chapter 66, is amended by adding thereto the following subsection:

(2) The Minister may determine the amount of any capital ^{Public libraries} expenditure of a municipality, including a district, metropolitan or regional municipality, for public library purposes that may be financed through The Ontario Universities Capital Aid Corporation, and debentures issued for public library purposes may be purchased from such a municipality by the Corporation only on the recommendation of the Minister.

2. Section 6c of the said Act, as enacted by the Statutes of Ontario, ^{s. 6c, amended} 1972, chapter 114, section 3, is amended by adding thereto the following clause:

(g) authorizing the Deputy Minister of Colleges and Universities or any officer of the Ministry to exercise the power to approve loans under section 6d.

3. The said Act is amended by adding thereto the following section: ^{s. 6d, enacted}

6d.—(1) Upon the recommendation of the Minister, the Lieutenant Governor in Council may, upon such terms as he considers proper, agree to guarantee and may guarantee the payment of any loan and the interest thereon made by a chartered bank to which the *Bank Act* (Canada) applies, ^{Guarantee of bank loans} to a student of a university, college of applied arts and technology or other post-secondary institution in Ontario where, ^{R.S.C. 1970, c. B-1}

- (a) the loan is made to such student pursuant to an application made by the student in the form prescribed by the regulations; and

- (b) the loan is approved by the Minister or by a person authorized for such purpose by the regulations.

Form of
guarantee

(2) The form and manner of the guarantee shall be such as the Lieutenant Governor in Council approves, and the guarantee shall be signed by the Treasurer of Ontario or such other officers as are designated by the Lieutenant Governor in Council, and, upon being so signed, the Province of Ontario is liable for the payment of the loan and interest thereon guaranteed according to the terms of the guarantee, and any guarantee so signed is evidence that the terms of this section have been complied with.

Payment of
guarantee

(3) The Lieutenant Governor in Council may make arrangements for supplying the money necessary to fulfil the requirements of any guarantee and to advance the amount necessary for that purpose out of the public funds of the Province of Ontario.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. This Act may be cited as *The Ministry of Colleges and Universities Amendment Act, 1973*.

An Act to amend
The Ministry of Colleges and
Universities Act, 1971

1st Reading

June 20th, 1973

2nd Reading

3rd Reading

THE HON. J. MCNIE
Minister of Colleges and Universities

(Government Bill)

CA20N

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-B 56

BILL 176

Government
Publications

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

**An Act to amend The Ministry of Colleges and
Universities Act, 1971**

THE HON. J. MCNIE
Minister of Colleges and Universities



TORONTO

PRINTED AND PUBLISHED BY THE QUEEN'S PRINTER AND PUBLISHER

BILL 176

1973

An Act to amend The Ministry of Colleges and Universities Act, 1971

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 5 of *The Ministry of Colleges and Universities Act, 1971*, ^{s. 5, amended} being chapter 66, is amended by adding thereto the following subsection:

(2) The Minister may determine the amount of any capital ^{Public libraries} expenditure of a municipality, including a district, metropolitan or regional municipality, for public library purposes that may be financed through The Ontario Universities Capital Aid Corporation, and debentures issued for public library purposes may be purchased from such a municipality by the Corporation only on the recommendation of the Minister.

2. Section 6c of the said Act, as enacted by the Statutes of Ontario, ^{s. 6c, amended} 1972, chapter 114, section 3, is amended by adding thereto the following clause:

(g) authorizing the Deputy Minister of Colleges and Universities or any officer of the Ministry to exercise the power to approve loans under section 6d.

3. The said Act is amended by adding thereto the following section: ^{s. 6d, enacted}

6d.—(1) Upon the recommendation of the Minister, the ^{Guarantee of bank loans} Lieutenant Governor in Council may, upon such terms as he considers proper, agree to guarantee and may guarantee the payment of any loan and the interest thereon made by a chartered bank to which the *Bank Act* (Canada) applies, ^{R.S.C. 1970, c. B-1} to a student of a university, college of applied arts and technology or other post-secondary institution in Ontario where,

- (a) the loan is made to such student pursuant to an application made by the student in the form prescribed by the regulations; and

- (b) the loan is approved by the Minister or by a person authorized for such purpose by the regulations.

Form of
guarantee

(2) The form and manner of the guarantee shall be such as the Lieutenant Governor in Council approves, and the guarantee shall be signed by the Treasurer of Ontario or such other officers as are designated by the Lieutenant Governor in Council, and, upon being so signed, the Province of Ontario is liable for the payment of the loan and interest thereon guaranteed according to the terms of the guarantee, and any guarantee so signed is evidence that the terms of this section have been complied with.

Payment of
guarantee

(3) The Lieutenant Governor in Council may make arrangements for supplying the money necessary to fulfil the requirements of any guarantee and to advance the amount necessary for that purpose out of the public funds of the Province of Ontario.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. This Act may be cited as *The Ministry of Colleges and Universities Amendment Act, 1973*.

An Act to amend
The Ministry of Colleges and
Universities Act, 1971

1st Reading

June 20th, 1973

2nd Reading

June 22nd, 1973

3rd Reading

June 22nd, 1973

THE HON. J. MCNIFF
Minister of Colleges and Universities

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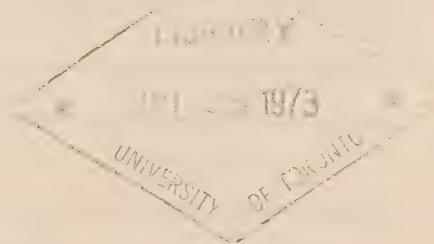
BILL 177

Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

The Gasoline Tax Act, 1973

THE HON. A. GROSSMAN
Minister of Revenue



TORONTO

PRINTED AND PUBLISHED BY THE QUEEN'S PRINTER AND PUBLISHER

EXPLANATORY NOTES

This Bill is a re-enactment of *The Gasoline Tax Act* to include provisions found in other Ontario taxation statutes. The principal inclusions relate to:

1. the authority of the Minister of Revenue to appoint tax collectors;
2. the provision that all collectors, importers and retailers (which terms are all defined in the Bill) are deemed to be agents of the Minister for purposes of collecting tax and that all tax moneys collected are deemed to be held in trust for the Crown;
3. the authority of the Minister to make assessments and reassessments in circumstances as set out in the Bill;
4. provisions for objections to assessments by the Minister and appeals to the Supreme Court as well as setting out procedures for objections and appeals;
5. provision for remedies for the Minister to recover payment of tax;
6. provision for any amount payable to bear interest with a discretion to the Minister to exempt persons from payment of interest;
7. provisions for the Minister to authorize investigations setting out the matters, things and places which may be investigated or examined and the forms the investigation may take;
8. specific penalties for failure to collect or remit tax, deliver returns or otherwise comply with the Act or regulations while retaining a general penalty section, there is provision that individuals associated with corporations may have personal liability for offences under the Act.
9. clarification and expansion of the provisions for confidentiality of the information obtained setting out the circumstances under which Crown employees may communicate information obtained for purposes of the Act;
10. extension of authority to make regulations to:
 - (a) prescribing rates of interest payable,
 - (b) providing for refunds,
 - (c) prescribing forms,
 - (d) authorizing or requiring the Deputy Minister of Revenue or other officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed on the Minister by the Bill.

The Gasoline Tax Act, 1973

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "assessment" includes a re-assessment;
- (b) "aviation fuel" means any gas or liquid that is sold to be used or is used to create power in an aircraft and any product that is designated to be aviation fuel by the regulations;
- (c) "collector" means a person appointed in writing by the Minister to be a collector of tax under this Act;
- (d) "gasoline" means any gas or liquid that may be used for the purpose of generating power by means of internal combustion and includes any substance added thereto, but does not include the following products, except when any such product is mixed or combined with gasoline,
 - (i) aviation fuel, except when used or intended to be used to generate power by means of internal combustion in a vehicle other than an aircraft,
 - (ii) the products commonly known as diesel fuel, fuel oil, coal oil or kerosene,
 - (iii) products excluded from this Act by the regulations;
- (e) "importer" means any person, other than a collector, who receives in Ontario gasoline or aviation fuel from a person outside Ontario who is not a collector, or who receives outside Ontario gasoline or aviation

fuel for the purpose of resale in Ontario or for his own use or the use of others at his expense in Ontario;

- (f) "Minister" means the Minister of Revenue;
- (g) "prescribed" means prescribed by the regulations made under this Act;
- (h) "purchaser" means any person purchasing or receiving delivery in Ontario of gasoline or aviation fuel for his own use or for the use of others at his expense, and includes an importer who brings into Ontario gasoline or aviation fuel for his own use or the use of others at his expense;
- (i) "regulations" means the regulations made under this Act;
- (j) "retailer" means a person who sells gasoline or aviation fuel for use by a purchaser and not for resale;
- (k) "Treasurer" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (l) "wholesaler" means a person who sells gasoline or aviation fuel for the purpose of resale. R.S.O. 1970, c. 190, s. 1, *amended*.

Tax payable
by purchaser

2.—(1) Every purchaser of gasoline shall pay to the Treasurer a tax at the rate of 19 cents per imperial gallon on all gasoline purchased or delivery of which is received by him. 1972, c. 13, s. 1.

Tax on
aviation
fuel

(2) Every purchaser of aviation fuel shall pay to the Treasurer a tax at the rate of 3 cents per imperial gallon on all aviation fuel purchased or the delivery of which is received by him. R.S.O. 1970, c. 190, s. 2 (2).

Tax to be
paid at time
of sale

(3) A purchaser, other than an importer, shall pay the tax imposed by this Act at the time of the purchase or delivery, as the case may be. *New*.

Retailer to
collect
tax from
purchaser

3.—(1) No retailer in Ontario shall sell or deliver to a purchaser any gasoline or aviation fuel without collecting from the purchaser the tax imposed by this Act, and for the purpose of collecting such tax every retailer is an agent of the Minister.

Retailer to
pay tax to
collector

(2) Every retailer who is not also a collector shall pay over the tax collected by him to a collector at the time and in the manner required by this Act and the regulations. *New*.

4.—(1) Every importer shall remit to the Treasurer, at the time and in the manner prescribed, the tax payable by him in respect of the gasoline or aviation fuel imported by him into Ontario for his own use or the use of others at his expense. Importers to remit tax

(2) Every importer who sells in Ontario gasoline or aviation fuel shall collect and remit to the Treasurer at the time and in the manner prescribed the tax imposed by this Act in respect of such gasoline or aviation fuel, and for the purpose of collecting such tax every importer is an agent of the Minister. *New.* Idem

5. Every purchaser is liable for the tax imposed by this Act until he has paid it. *New.* Purchaser liable for tax

6.—(1) The Minister may appoint any person who is in the business of manufacturing gasoline or aviation fuel or of selling gasoline or aviation fuel for resale in Ontario to be a collector under this Act. Appointment of collector

(2) No person shall, unless he is a collector, a wholesaler or an importer, sell in Ontario for resale or deliver in Ontario for resale any gasoline or aviation fuel. Only collector, wholesaler or importer may sell in Ontario for resale

(3) Every collector shall at the times and in the manner prescribed collect from any wholesaler, retailer or purchaser to whom the collector sells gasoline or aviation fuel the tax collectable and payable under this Act, and for that purpose every collector is an agent of the Minister for the collection of the tax imposed by this Act and for the remittance thereof to the Treasurer. Collector to collect tax

(4) No collector shall collect the tax imposed by this Act on the sale by him of gasoline or aviation fuel to a collector who is not a purchaser in respect of such gasoline or aviation fuel. Idem

(5) No person appointed a collector under subsection 1 shall thus be made ineligible as a member of the Assembly. *New.* Idem

7.—(1) The Minister may suspend or cancel the appointment of any person appointed to be a collector where, Termination of collector's appointment

(a) the person contravenes any of the provisions of this Act or the regulations; or

(b) the person has not delivered or sold, for resale in Ontario, any gasoline or aviation fuel for a period of three months,

but before a suspension or cancellation is made such person shall be afforded an opportunity to appear before the Minister to show cause why the appointment as a collector should not be suspended or cancelled, as the case may be.

Idem
1971, c. 47

(2) Notwithstanding subsection 1 and notwithstanding the provisions of *The Statutory Powers Procedure Act, 1971*, the Minister may suspend or cancel the appointment of any collector forthwith where the collector has failed to remit the tax that he has collected or any tax that is payable by him, at the time and in the manner demanded of him.

Notice
terminating
collector's
appointment

(3) Notice of suspension or cancellation of the appointment of a collector is properly served if served either personally or by registered mail sent to the last known address of the collector. *New.*

Returns

8.—(1) Every collector shall deliver to the Minister, without notice or demand, a return of tax collectable by him at the time and in the manner prescribed in the regulations.

Idem

(2) Every return shall be verified by a certificate of the collector and, if the collector is not an individual, of any one of its officers or its resident manager or representative in Ontario, certifying that the financial and other statements of information included therein or attached thereto are in agreement with the books of the collector and exhibit truly, correctly and completely all information for the period covered by the return.

Failure
to comply

(3) Every collector who fails to comply with subsection 1 of this section shall pay a penalty of \$200.

Incomplete
returns

(4) Every collector who fails to complete the information required in the return to be delivered to the Minister under subsection 1 is guilty of an offence and on summary conviction is liable to a fine of \$200. *New.*

Trans-
mission of
tax

9. Every collector shall remit with the return required by section 8 the amount of the tax payable by him or collectable by him, as the case may be, as shown therein. *New.*

Tax moneys
are trust
moneys

10.—(1) Every person who collects any tax under this Act shall be deemed to hold such tax in trust for Her Majesty the Queen in right of Ontario and shall remit to the Treasurer all such tax at such times and in such manner as is required by this Act and the regulations.

(2) Every tax that is payable under this Act by a collector ^{Idem} or importer in respect of gasoline or aviation fuel of which he is the purchaser is deemed to be trust moneys in the hands of the collector or importer, as the case may be, held by him in trust for Her Majesty the Queen in right of Ontario, and the collector or importer shall remit to the Treasurer all such tax at the times and in the manner required by this Act and the regulations. *New.*

11.—(1) Where any person fails to make a return or remittance as required under this Act or the regulations or if his returns are not substantiated by his records, the Minister may make an assessment of the tax collectable or payable by such person for which he has not accounted. ^{Assessment}

(2) Where the Minister has made an assessment under subsection 1, he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Treasurer by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment. ^{Notice of assessment}

(3) Where the Minister has made an assessment under subsection 1, the Notice of Assessment may provide that the amount owing is payable forthwith. ^{Notice of Assessment under subs. 1}

(4) The Minister may, at any time he considers reasonable, assess or reassess any tax collectable or payable by any person or payable by a purchaser, under this Act. ^{Assessment from time to time}

(5) Where it appears from an inspection, audit or examination of the books of account, records or documents of any collector, wholesaler, retailer or purchaser that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax collectable or payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax collectable or payable as the case may be. ^{Assessment on inspection}

(6) The Minister shall send by mail or by registered mail or deliver by personal service a notice of the assessment made under subsection 4 or 5 to the person so assessed, at his latest known address, or where the person has more than one address, one of which is in Ontario, the notice shall be sent to his address in Ontario, and the notice may provide that the amount owing is payable forthwith. ^{Notice of assessment under subs. 4 or 5}

Continuation of liability for tax	(7) Liability for tax imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.
Minister not bound by returns	(8) The Minister is not bound by a return or information delivered by or on behalf of any person under this Act and may, notwithstanding any return or information delivered or if no return or information has been delivered, assess the tax payable under this Act.
Assessment valid and binding	(9) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.
Idem	(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken. <i>New.</i>
Unpaid taxes to bear interest	12. —(1) Any amount payable or to be remitted to the Treasurer under this Act bears interest, at the rate prescribed by the regulations, from the day on which the amount should have been paid or remitted to the Treasurer to the day of payment.
Payments applied first to interest	(2) Any payment to the Treasurer under this Act, other than a payment of penalties and other than fines imposed for offences, shall first be applied to any interest payable by the person making the payment or on account of whom the payment is made. <i>New.</i>
Notice of objection	13. —(1) Where a person objects to an assessment made under section 11, he may, within ninety days from the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.
Service	(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister.
Reconsidera- tion	(3) Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail. <i>New.</i>

14.—(1) After the Minister has given the notification re-^{Appeal}
 quired by subsection 3 of section 13, a person who has served
 notice of objection under section 13 may appeal to the Supreme
 Court to have the assessment vacated or varied or reassessed,
 but no appeal under this section shall be instituted after the
 expiration of ninety days from the day notice has been mailed
 to such person under subsection 3 of section 13, and an appeal
 under this section shall not be made to the Divisional Court.

(2) An appeal to the Supreme Court shall be instituted<sup>Appeal, how
instituted</sup>
 by serving on the Minister a notice of appeal in duplicate
 in the prescribed form and by filing a copy thereof with the
 Registrar of the Supreme Court or with the local registrar
 of the Supreme Court for the county or district in which the
 person appealing resides or has his place of business.

(3) A notice of appeal shall be served on the Minister by being^{Service}
 sent by registered mail addressed to the Minister.

(4) The person appealing shall set out in the notice of<sup>Content of
notice of
appeal</sup>
 appeal a statement of the allegations of fact and the statutory
 provisions and reasons that he intends to submit in supporting
 his appeal.

(5) An appeal under this section and all proceedings there-<sup>Security
for costs</sup>
 under are, upon the expiration of sixty days from the day the
 appeal is instituted, null and void unless security for the costs
 of the appeal has been, within the same period, paid into
 court in such sum, not exceeding \$400, as the Minister requires
 and, upon an appeal becoming null and void by virtue of
 this subsection, no other appeal or proceeding shall be
 instituted in respect of the same decision.

(6) When security has been given under subsection 5, notice^{Idem}
 thereof shall be served on the Minister specifying the fact and
 the purpose of the payment.

(7) After the service on him of a notice of appeal under<sup>Reply to
notice of
appeal</sup>
 this section, the Minister shall with all due dispatch serve on
 the person appealing and file in the Supreme Court where
 the notice of appeal was filed a reply to the notice of appeal
 admitting or denying the facts alleged and containing a
 statement of such further allegations of fact and of such
 statutory provisions and reasons as he intends to rely on.

(8) Upon the filing of the material referred to in subsec-<sup>Matter
deemed
action</sup>
 tion 7, the matter shall be deemed to be an action in the
 court.

Disposition
of appeal

(9) The court may dispose of the appeal by,

(a) dismissing it;

(b) allowing it; or

(c) allowing it, and

(i) vacating the assessment,

(ii) varying the assessment,

(iii) restoring the original assessment, or

(iv) referring the assessment back to the Minister for reconsideration and reassessment.

Idem

(10) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper.

Procedure

(11) The practice and procedure of the Supreme Court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under subsection 8, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

Irregu-
larities

(12) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act.

Extension
of time

(13) The time within which a notice of objection under subsection 1 of section 13 or a notice of appeal under subsection 1 of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be. *New.*

Records to
be kept

15.—(1) Every collector, importer, wholesaler or retailer shall keep at his principal place of business records and books of account in such form and containing such information as will enable the accurate determination of the taxes collectable or payable under this Act.

Idem

(2) Every collector and importer shall, until written permission for their disposal is received from the Minister, retain

every such record or book of account and every account or voucher necessary to verify the information in any such record or book of account. *New.*

16.—(1) Any person thereunto authorized by the Minister <sup>Investiga-
tions</sup> for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises where any business is carried on or any property is kept or anything is done in connection with any business or where any books or records are or should be kept pursuant to this Act, and may,

- (a) audit or examine the books, records, accounts, vouchers, letters, telegrams or other documents that relate or may relate to either the information that is or should be in the books or records or to the amount of tax collectable or payable under this Act;
- (b) examine the property described by an inventory or any property, process or matter, an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax collectable or payable under this Act;
- (c) require a purchaser, retailer, wholesaler, importer or collector liable to collect or pay or considered possibly liable to collect or pay tax under this Act or, if such purchaser, retailer, wholesaler, importer or collector is a partnership or corporation, require a partner or the president, manager, secretary or any director, agent or representative thereof or any other person on the premises of such purchaser, retailer, wholesaler, importer or collector to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration, and for that purpose require such person to attend at the premises with him; and
- (d) if during the course of an audit or examination it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

Idem

(2) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any purchaser, retailer, wholesaler, importer or collector, or if such purchaser, retailer, wholesaler, importer or collector is a partnership or corporation, from a partner or the president, manager, secretary or any director, agent or representative thereof,

- (a) any information or a return as required under this Act or the regulations, or
- (b) production or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein.

Idem

(3) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person, partnership, syndicate, trust or corporation holding for or paying or liable to pay any amount to a purchaser, retailer, wholesaler, importer or collector, or from any partner, agent or official of any such person, partnership, syndicate, trust or corporation, production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents, within such reasonable time as is stipulated therein.

Idem

(4) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing any officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations and to seize and to take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

Production
of evidence
to prove tax
payable by
another
person

(5) The Minister may, by registered letter or by a demand served personally, require the production, under oath or otherwise, by any person, partnership, syndicate, trust or corporation, or by his or its agent or officer, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such

person, partnership, syndicate, trust or corporation or of his or its agent or officer for the purpose of determining what tax, if any, is collectable or payable under this Act by any purchaser or collector, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

(6) Where a book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may make, or cause to be made, one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way. Copies

(7) No person shall hinder or molest or interfere with any person doing anything that he is authorized by this section to do or prevent or attempt to prevent any person doing any such thing. Compliance

(8) Notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by this section to do. Idem

(9) Declarations or affidavits in connection with returns delivered under this Act or statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor. *New.* Administra-
tion of
oaths

17. The Minister may extend the time for making any return either before or after the time for making it has expired. *New.* Extended
time for
making
returns

18.—(1) Upon default of payment of an amount assessed under section 11, Recovery
of tax

- (a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his name of office and may be continued by his successor in office as if no change had occurred and shall be tried without a jury; and

- (b) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of a person liable to make a payment or remittance under this Act is located or situate for the amount of the tax owing by him, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court.

Compliance
to be proved
by affidavit

(2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person, partnership, syndicate, trust or corporation to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

Remedies
for recovery
of tax

(3) The use of any of the remedies provided by this section does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of any tax imposed by this Act are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or at law in favour of Her Majesty the Queen in right of Ontario. *New.*

Garnishment

19.—(1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment or remittance under this Act, he may, by registered letter or by a letter served personally, require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part to the Treasurer on account of the liability under this Act.

Idem

(2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability
of debtor

(3) Every person who has discharged any liability to a person liable to make a payment or remittance under this Act without complying with the requirements under this section is liable to pay to the Treasurer an amount equal to the liability discharged or the amount that he was required under this section to pay to the Treasurer, whichever is the lesser.

(4) Where a person who is or is about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carries on business under a name or style other than his own name, the registered or other letter under subsection 1 may be addressed to the name or style under which he carries on business and, in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee. Services of garnishee

(5) Where the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carry on business in partnership, the registered or other letter under subsection 1 may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. *New.* Idem

20.—(1) Every person required to collect the tax imposed by this Act who fails to collect the tax is liable on summary conviction to a fine of not less than \$200 and not more than an amount equal to the amount of tax that should have been collected as determined under subsection 4. Penalty for failure to collect tax

(2) Every employee of a person required to collect the tax imposed by this Act who permits or authorizes or is a party or privy to supplying gasoline or aviation fuel to a purchaser without collecting from the purchaser the tax imposed by this Act is guilty of an offence and on summary conviction is liable to a fine equal to the amount of the tax that should have been collected as determined under subsection 4. Penalty for failure of employee to collect tax

(3) Every person who is required to remit to a collector or to the Treasurer the tax imposed by this Act who fails to remit the tax is guilty of an offence and on summary conviction is liable to a fine of not less than \$200 and not more than an amount equal to the amount of the tax that should have been remitted as determined under subsection 4. Idem

(4) The Minister shall determine the amount of the tax referred to in subsections 1, 2 and 3 from such information as is available to him and shall issue a certificate as to the amount, but except where the Minister considers that there has been deliberate evasion of this Act, he shall not take into account a period of more than three years in determining the amount of tax referred to in the certificate. Idem

Idem (5) In any prosecution under subsection 1, 2 or 3 a certificate that is signed or that purports to be signed by the Minister or Deputy Minister of Revenue and that states the amount of tax that should have been collected or remitted, as the case may be, is *prima facie* evidence of the amount of tax that should have been collected or remitted and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Idem (6) Any information in respect of an offence under this Act may be for one or more than one offence, and no information, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Idem (7) Neither the application of any provision of this section nor the enforcement of any penalty hereunder suspends or affects any remedy for the recovery of any tax payable under this Act. *New.*

Offences **21.**—(1) Every person who has failed to deliver a return as and when required by this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not less than \$25 for each day during which the default continues.

Idem (2) Every person who contravenes section 16 is guilty of an offence and on summary conviction is liable to a fine of \$25 for each day during which the default continues. *New.*

False statements **22.** Every person who has,

- (a) made, participated in, assented to or acquiesced in the making of false or deceptive statements in a return, certificate, statement or answer, delivered or made as required by or under this Act or the regulations;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a purchaser, retailer, wholesaler or collector;
- (c) made, assented to or acquiesced in the making of, false or deceptive entries or omitted, assented to or acquiesced in the omission, to enter a material particular in records or books of account of a purchaser, retailer, wholesaler or collector;

- (d) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act; or
- (e) conspired with any person to commit any offence described in clauses *a* to *d* inclusive,

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on summary conviction to a fine of not less than \$200 and not more than an amount equal to double the amount of the tax that should have been declared to be collectable or payable or that was sought to be evaded, or to imprisonment for a term of not more than two years, or to both. *New.*

23. Every person who contravenes any of the provisions of this Act or the regulations for which no other penalty is provided is guilty of an offence and on summary conviction is liable for a first offence to a fine of not less than \$25 and not more than \$200, and for any subsequent offence to a fine of not less than \$100 and not more than \$500. R.S.O. 1970, c. 190, s. 5, *amended*. General penalty

24. Any officer, director or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in the commission of any act which is an offence under this Act for which the corporation would be liable for prosecution is guilty of an offence and on summary conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. *New.* Officers, etc., of corporations

25. An information in respect of an offence against this Act shall be laid within six years of the time when the matter of the information arose. R.S.O. 1970, c. 190, s. 7, *amended*. Limitation

26. Fines imposed under this Act shall be paid to the Treasurer on behalf of Her Majesty the Queen in right of Ontario, and every penalty imposed by this Act is payable upon and in accordance with the demand of the Minister. R.S.O. 1970, c. 190, s. 8, *amended*. Fines payable to Treasurer

27.—(1) Where a person has remitted to the Treasurer a greater amount of money for a period than was required by this Act to be remitted for that period, or a greater amount than was payable by the person, the Treasurer shall either refund the overpayment or, at the option of the Minister, apply the amount of the overpayment to liability of the person with respect to a previous or subsequent period, in which latter case the Minister shall notify the person of such action. Over-payments

Idem

(2) Where an amount in respect of an overpayment is refunded or applied on other liability, interest at such rate as is prescribed by the regulations shall be paid or applied thereon for the period commencing on the day the overpayment arose and ending with the day of refunding or application on other liability, unless the amount of interest so calculated is less than \$5 in which event no interest need be paid or applied under this subsection.

Idem

(3) Where by a decision of the Minister under section 13 or by a decision of the court it is finally determined that the tax payable under this Act by a person is less than the amount assessed by the assessment to which objection was made or from which the appeal was taken and the decision makes it appear that there has been an overpayment of tax, the interest payable under subsection 2 on the overpayment shall be computed at the rate prescribed by the regulations. *New.*

Refunds

28. Any amount refunded under this Act in excess of the amount to which the person receiving the refund was entitled shall be deemed to be tax owing to the Treasurer, and the sections of this Act relating to the assessment (including objection and appeal therefrom) and collection of taxes apply *mutatis mutandis* to the said amount. *New.*

Relief
from
interest

29. Where, owing to special circumstances, it is considered inequitable that the whole amount of interest imposed by this Act be paid, the Minister may exempt a person from payment of the whole or any part of the interest. *New.*

Communica-
tion of
information

30.—(1) Except as authorized by this section, no person employed by the Government of Ontario shall,

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act. R.S.O. 1970, c. 190, s. 6 (1), *amended*.

Officials not
compellable
as witnesses

(2) Notwithstanding any other Act, but subject to subsection 3, no person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(3) Subsections 1 and 2 do not apply in respect of,

Exceptions
for legal
proceedings

- (a) criminal proceedings under any Act of the Parliament of Canada; or
- (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or
- (c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax.

(4) A person employed by the Government of Ontario may, in the course of his duties in connection with the administration or enforcement of this Act,

Exception
for internal
adminis-
tration

- (a) communicate or allow to be communicated to an official or authorized person employed by the Government of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and
- (b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.

(5) Notwithstanding anything in this Act, the Minister may permit a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

Exception for
objection or
appeals, etc.

- (a) the person from whom the book, record, writing, return or other document was obtained; or
- (b) any person,

- (i) for the purposes of any objection or appeal that has been or may be taken by that person

under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or

- (ii) by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause *a* or *b* or the agent of any such person authorized in writing in that behalf. *New.*

Exception
for tax
enforcement
in other
jurisdictions

(6) Notwithstanding anything in this Act, the Minister may permit information or a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administration of any Act of the Parliament of Canada imposing any tax or duty; or
- (b) a minister of the government of any province of Canada or officer or employee employed under that minister, for the purposes of administering and enforcing an Act of the Legislature of that province imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of another province, as the case may be, is permitted to give to the Minister information or copies of any book, record, writing, return or other document obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that other province, as the case may be, in the administration or enforcement of that Act for the purposes of the administration of this Act. R.S.O. 1970, c. 190, s. 6 (2), *amended*.

Regulations

31. The Lieutenant Governor in Council may make regulations,

- (a) providing for the collection of the tax imposed by this Act;
- (b) requiring the furnishing of surety bonds by persons charged with the collection of the tax imposed by this Act and prescribing the form and amount of such bonds;

- (c) providing for the accounting for and paying over of any sums of money collected by or payable to the persons charged with the collection of the tax imposed by this Act and regulating the time and manner of such accounting and payment;
- (d) prescribing the returns and statements to be made by importers, manufacturers, wholesalers, retailers and purchasers of gasoline or aviation fuel, the information to be given in such returns and statements and by whom and in what manner they shall be made, and prescribing the records to be kept by such persons;
- (e) excluding products from this Act;
- (f) designating products to be aviation fuel;
- (g) exempting any class of persons from the payment of the tax imposed by this Act;
- (h) providing for the refund of the tax paid under this Act, or any portion thereof, to any purchaser or class of purchasers and prescribing the records and material to be furnished upon any application for a refund;
- (i) providing for the refund of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such refund may be made;
- (j) prescribing the rates of interest payable under this Act;
- (k) prescribing forms to be used for the purpose of this Act or the regulations;
- (l) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;
- (m) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.
1972, c. 13, s. 2, *amended*.

32. *The Gasoline Tax Act and The Gasoline Tax Amendment Act, 1972* are repealed.

R.S.O. 1970,
c. 190,
1972, c. 13,
repealed

Commence-
ment

33. This Act comes into force on the day it receives Royal Assent.

Short title

34. This Act may be cited as *The Gasoline Tax Act, 1973*.

The Gasoline Tax Act, 1973

1st Reading

June 21st, 1973

2nd Reading

3rd Reading

THE HON. A. GROSSMAN
Minister of Revenue

(Government Bill)

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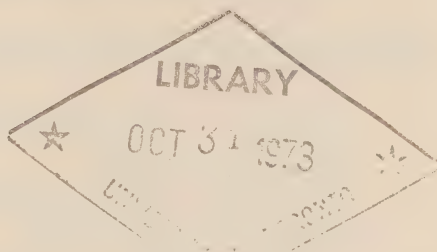
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BILL 177

Government
Publications
Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

The Gasoline Tax Act, 1973



THE HON. A. GROSSMAN
Minister of Revenue

(Reprinted as amended by the Committee of the Whole House)

TORONTO

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EXPLANATORY NOTES

This Bill is a re-enactment of *The Gasoline Tax Act* to include provisions found in other Ontario taxation statutes. The principal inclusions relate to:

1. the authority of the Minister of Revenue to appoint tax collectors;
2. the provision that all collectors, importers and retailers (which terms are all defined in the Bill) are deemed to be agents of the Minister for purposes of collecting tax and that all tax moneys collected are deemed to be held in trust for the Crown;
3. the authority of the Minister to make assessments and reassessments in circumstances as set out in the Bill;
4. provisions for objections to assessments by the Minister and appeals to the Supreme Court as well as setting out procedures for objections and appeals;
5. provision for remedies for the Minister to recover payment of tax;
6. provision for any amount payable to bear interest with a discretion to the Minister to exempt persons from payment of interest;
7. provisions for the Minister to authorize investigations setting out the matters, things and places which may be investigated or examined and the forms the investigation may take;
8. specific penalties for failure to collect or remit tax, deliver returns or otherwise comply with the Act or regulations while retaining a general penalty section, there is provision that individuals associated with corporations may have personal liability for offences under the Act.
9. clarification and expansion of the provisions for confidentiality of the information obtained setting out the circumstances under which Crown employees may communicate information obtained for purposes of the Act;
10. extension of authority to make regulations to:
 - (a) prescribing rates of interest payable,
 - (b) providing for refunds,
 - (c) prescribing forms,
 - (d) authorizing or requiring the Deputy Minister of Revenue or other officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed on the Minister by the Bill.

The Gasoline Tax Act, 1973

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "assessment" includes a re-assessment;
- (b) "aviation fuel" means any gas or liquid that is sold to be used or is used to create power in an aircraft and any product that is designated to be aviation fuel by the regulations;
- (c) "collector" means a person appointed in writing by the Minister to be a collector of tax under this Act;
- (d) "gasoline" means any gas or liquid that may be used for the purpose of generating power by means of internal combustion and includes any substance added thereto, but does not include the following products, except when any such product is mixed or combined with gasoline,
 - (i) aviation fuel, except when used or intended to be used to generate power by means of internal combustion in a vehicle other than an aircraft,
 - (ii) the products commonly known as diesel fuel, fuel oil, coal oil or kerosene,
 - (iii) products excluded from this Act by the regulations;
- (e) "importer" means any person, other than a collector, who receives in Ontario gasoline or aviation fuel from a person outside Ontario who is not a collector, or who receives outside Ontario gasoline or aviation

fuel for the purpose of resale in Ontario or for his own use or the use of others at his expense in Ontario;

- (f) "Minister" means the Minister of Revenue;
- (g) "prescribed" means prescribed by the regulations made under this Act;
- (h) "purchaser" means any person purchasing or receiving delivery in Ontario of gasoline or aviation fuel for his own use or for the use of others at his expense, and includes an importer who brings into Ontario gasoline or aviation fuel for his own use or the use of others at his expense;
- (i) "regulations" means the regulations made under this Act;
- (j) "retailer" means a person who sells gasoline or aviation fuel for use by a purchaser and not for resale;
- (k) "Treasurer" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (l) "wholesaler" means a person who sells gasoline or aviation fuel for the purpose of resale. R.S.O. 1970, c. 190, s. 1, *amended*.

Tax payable
by purchaser

2.—(1) Every purchaser of gasoline shall pay to the Treasurer a tax at the rate of 19 cents per imperial gallon on all gasoline purchased or delivery of which is received by him. 1972, c. 13, s. 1.

Tax on
aviation
fuel

(2) Every purchaser of aviation fuel shall pay to the Treasurer a tax at the rate of 3 cents per imperial gallon on all aviation fuel purchased or the delivery of which is received by him. R.S.O. 1970, c. 190, s. 2 (2).

Tax to be
paid at time
of sale

(3) A purchaser, other than an importer, shall pay the tax imposed by this Act at the time of the purchase or delivery, as the case may be. *New*.

Retailer to
collect
tax from
purchaser

3.—(1) No retailer in Ontario shall sell or deliver to a purchaser any gasoline or aviation fuel without collecting from the purchaser the tax imposed by this Act, and for the purpose of collecting such tax every retailer is an agent of the Minister.

Retailer to
pay tax to
collector

(2) Every retailer who is not also a collector shall pay over the tax collected by him to a collector at the time and in the manner required by this Act and the regulations. *New*.

4.—(1) Every importer shall remit to the Treasurer, at the time and in the manner prescribed, the tax payable by him in respect of the gasoline or aviation fuel imported by him into Ontario for his own use or the use of others at his expense. Importers to remit tax

(2) Every importer who sells in Ontario gasoline or aviation fuel shall collect and remit to the Treasurer at the time and in the manner prescribed the tax imposed by this Act in respect of such gasoline or aviation fuel, and for the purpose of collecting such tax every importer is an agent of the Minister. *New.* Idem

5. Every purchaser is liable for the tax imposed by this Act until he has paid it. *New.* Purchaser liable for tax

6.—(1) The Minister may appoint any person who is in the business of manufacturing gasoline or aviation fuel or of selling gasoline or aviation fuel for resale in Ontario to be a collector under this Act. Appointment of collector

(2) No person shall, unless he is a collector, a wholesaler or an importer, sell in Ontario for resale or deliver in Ontario for resale any gasoline or aviation fuel. Only collector, wholesaler or importer may sell in Ontario for resale

(3) Every collector shall at the times and in the manner prescribed collect from any wholesaler, retailer or purchaser to whom the collector sells gasoline or aviation fuel the tax collectable and payable under this Act, and for that purpose every collector is an agent of the Minister for the collection of the tax imposed by this Act and for the remittance thereof to the Treasurer. Collector to collect tax

(4) No collector shall collect the tax imposed by this Act on the sale by him of gasoline or aviation fuel to a collector who is not a purchaser in respect of such gasoline or aviation fuel. Idem

(5) No person appointed a collector under subsection 1 shall thus be made ineligible as a member of the Assembly. *New.* Idem

7.—(1) The Minister may suspend or cancel the appointment of any person appointed to be a collector where, Termination of collector's appointment

- (a) the person contravenes any of the provisions of this Act or the regulations; or
- (b) the person has not delivered or sold, for resale in Ontario, any gasoline or aviation fuel for a period of three months,

but before a suspension or cancellation is made such person shall be afforded an opportunity to appear before the Minister to show cause why the appointment as a collector should not be suspended or cancelled, as the case may be.

Idem

(2) Notwithstanding subsection 1, where a collector has failed to remit the tax that he has collected or any tax that was payable by him under this Act at the time and in the manner demanded of him, the Minister may, by notice in writing to the collector and without a hearing, suspend forthwith the appointment of the collector, and the notice shall state the failure of the collector for which his appointment is suspended, and the Minister shall, within fifteen days of the service of such notice of suspension, hold a hearing to determine whether the suspension of the collector's appointment should be rescinded or whether the collector's appointment should be cancelled.

Notice
terminating
collector's
appointment

(3) Notice of suspension or cancellation of the appointment of a collector is properly served if served either personally or by registered mail sent to the last known address of the collector. *New.*

Returns

8.—(1) Every collector shall deliver to the Minister, without notice or demand, a return of tax collectable by him at the time and in the manner prescribed in the regulations.

Idem

(2) Every return shall be verified by a certificate of the collector and, if the collector is not an individual, of any one of its officers or its resident manager or representative in Ontario, certifying that the financial and other statements of information included therein or attached thereto are in agreement with the books of the collector and exhibit truly, correctly and completely all information for the period covered by the return.

Failure
to comply

(3) Every collector who fails to comply with subsection 1 of this section shall pay a penalty of \$200.

Incomplete
returns

(4) Every collector who fails to complete the information required in the return to be delivered to the Minister under subsection 1 is guilty of an offence and on summary conviction is liable to a fine of \$200. *New.*

Trans-
mission of
tax


9. Every collector shall remit with the return required by section 8 the amount of the tax payable by him or collectable by him, as the case may be, as shown therein. *New.*

Tax moneys
are trust
moneys

10.—(1) Every person who collects any tax under this Act shall be deemed to hold such tax in trust for Her



Majesty the Queen in right of Ontario and shall remit to the Treasurer all such tax at such times and in such manner as is required by this Act and the regulations.

(2) Every tax that is payable under this Act by a collector ^{idem} or importer in respect of gasoline or aviation fuel of which he is the purchaser is deemed to be trust moneys in the hands of the collector or importer, as the case may be, held by him in trust for Her Majesty the Queen in right of Ontario, and the collector or importer shall remit to the Treasurer all such tax at the times and in the manner required by this Act and the regulations. *New.*

11.—(1) Where any person fails to make a return or ^{Assessment} remittance as required under this Act or the regulations or if his returns are not substantiated by his records, the Minister may make an assessment of the tax collectable by such person or of the tax, interest or penalty payable by such person, as the case may be, for which he has not accounted. 

(2) Where the Minister has made an assessment under sub-^{Notice of assessment} section 1, he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Treasurer by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

(3) Where the Minister has made an assessment under ^{Notice of assessment} subsection 1, the notice of assessment may provide that the ^{under subs. 1} amount owing is payable forthwith.

 (4) The Minister may, at any time he considers reasonable, ^{Assessment from time to time} assess or reassess any tax collectable or any tax, interest or penalty payable by any person under this Act or under *The* ^{R.S.O. 1970, c. 190} *Gasoline Tax Act*. 

(5) Where it appears from an inspection, audit or examina- ^{Assessment on inspection} tion of the books of account, records or documents of any collector, wholesaler, retailer or purchaser that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax collectable or payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax collectable or of the tax, interest or penalty payable, as the case may be.

Notice of
assessment
under
subs. 4 or 5

(6) The Minister shall send by mail or by registered mail or deliver by personal service a notice of the assessment made under subsection 4 or 5 to the person so assessed, at his latest known address, or where the person has more than one address, one of which is in Ontario, the notice shall be sent to his address in Ontario, and the notice may provide that the amount owing is payable forthwith.

Continuation
of liability
for tax

(7) Liability for tax imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Minister
not bound
by returns

(8) The Minister is not bound by a return or information delivered by or on behalf of any person under this Act and may, notwithstanding any return or information delivered or if no return or information has been delivered, assess the tax payable under this Act.

Assessment
valid and
binding

(9) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

Idem

(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken.
New.

Unpaid taxes
to bear
interest

12.—(1) Any amount payable or to be remitted to the Treasurer under this Act bears interest, at the rate prescribed by the regulations, from the day on which the amount should have been paid or remitted to the Treasurer to the day of payment.

Payments
applied
first to
interest

(2) Any payment to the Treasurer under this Act, other than a payment of penalties and other than fines imposed for offences, shall first be applied to any interest payable by the person making the payment or on account of whom the payment is made. *New.*

Notice of
objection

13.—(1) Where a person objects to an assessment made under section 11, he may, within ninety days from the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(2) A notice of objection under this section shall be served ^{Service} by being sent by registered mail addressed to the Minister.

(3) Upon receipt of a notice of objection, the Minister shall ^{Reconsideration} with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail. *New.*

14.—(1) After the Minister has given the notification re- ^{Appeal} quired by subsection 3 of section 13, a person who has served notice of objection under section 13 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day notice has been mailed to such person under subsection 3 of section 13, and an appeal under this section shall not be made to the Divisional Court.

(2) An appeal to the Supreme Court shall be instituted ^{Appeal, how instituted} by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the local registrar of the Supreme Court for the county or district in which the person appealing resides or has his place of business.

(3) A notice of appeal shall be served on the Minister by being ^{Service} sent by registered mail addressed to the Minister.

(4) The person appealing shall set out in the notice of ^{Content of notice of appeal} appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in supporting his appeal.

(5) After the service on him of a notice of appeal under ^{Reply to notice of appeal} this section, the Minister shall with all due dispatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on.

(6) Upon the filing of the material referred to in subsection 5, the matter shall be deemed to be an action in the ^{Matter deemed action} court.

(7) The court may dispose of the appeal by, ^{Disposition of appeal}

(a) dismissing it;

(b) allowing it; or

(c) allowing it, and

(i) vacating the assessment,

(ii) varying the assessment,

(iii) restoring the original assessment, or

(iv) referring the assessment back to the Minister for reconsideration and reassessment.

Idem (8) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper.

Procedure (9) The practice and procedure of the Supreme Court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under subsection 6, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

Irregularities (10) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act.

Extension of time (11) The time within which a notice of objection under subsection 1 of section 13 or a notice of appeal under subsection 1 of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be. *New.*

Records to be kept **15.—**(1) Every collector, importer, wholesaler or retailer shall keep at his principal place of business records and books of account in such form and containing such information as will enable the accurate determination of the taxes collectable or payable under this Act.

Idem (2) Every collector and importer shall, until written permission for their disposal is received from the Minister, retain

every such record or book of account and every account or voucher necessary to verify the information in any such record or book of account. *New.*

16.—(1) Any person thereunto authorized by the Minister <sup>Investiga-
tions</sup> for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises where any business is carried on or any property is kept or anything is done in connection with any business or where any books or records are or should be kept pursuant to this Act, and may,

- (a) audit or examine the books, records, accounts, vouchers, letters, telegrams or other documents that relate or may relate to either the information that is or should be in the books or records or to the amount of tax collectable or payable under this Act;
- (b) examine the property described by an inventory or any property, process or matter, an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax collectable or payable under this Act;
- (c) require a purchaser, retailer, wholesaler, importer or collector liable to collect or pay or considered possibly liable to collect or pay tax under this Act or, if such purchaser, retailer, wholesaler, importer or collector is a partnership or corporation, require a partner or the president, manager, secretary or any director, agent or representative thereof or any other person on the premises of such purchaser, retailer, wholesaler, importer or collector to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration, and for that purpose require such person to attend at the premises with him; and
- (d) if during the course of an audit or examination it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

Idem

(2) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any purchaser, retailer, wholesaler, importer or collector, or if such purchaser, retailer, wholesaler, importer or collector is a partnership or corporation, from a partner or the president, manager, secretary or any director, agent or representative thereof,

(a) any information or a return as required under this Act or the regulations, or

(b) production or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein.

Idem

(3) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person, partnership, syndicate, trust or corporation holding for or paying or liable to pay any amount to a purchaser, retailer, wholesaler, importer or collector, or from any partner, agent or official of any such person, partnership, syndicate, trust or corporation, production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents, within such reasonable time as is stipulated therein.

Idem

(4) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing any officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations and to seize and to take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

Production
of evidence
to prove tax
payable by
another
person

(5) The Minister may, by registered letter or by a demand served personally, require the production, under oath or otherwise, by any person, partnership, syndicate, trust or corporation, or by his or its agent or officer, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such

person, partnership, syndicate, trust or corporation or of his or its agent or officer for the purpose of determining what tax, if any, is collectable or payable under this Act by any purchaser or collector, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

(6) Where a book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may make, or cause to be made, one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way. Copies

(7) No person shall hinder or molest or interfere with any person doing anything that he is authorized by this section to do or prevent or attempt to prevent any person doing any such thing. Compliance

(8) Notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by this section to do. Idem

(9) Declarations or affidavits in connection with returns delivered under this Act or statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor. *New.* Administra-
tion of
oaths

17. The Minister may extend the time for making any return either before or after the time for making it has expired. *New.* Extended
time for
making
returns

18.—(1) Upon default of payment of an amount assessed under section 11, Recovery
of tax

- (a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his name of office and may be continued by his successor in office as if no change had occurred and shall be tried without a jury; and

- (b) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of a person liable to make a payment or remittance under this Act is located or situate for the amount of the tax, interest and penalty or any of them owing by him, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court.

Compliance
to be proved
by affidavit

- (2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person, partnership, syndicate, trust or corporation to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

Remedies
for recovery
of tax

- (3) The use of any of the remedies provided by this section does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of any tax imposed by this Act are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or at law in favour of Her Majesty the Queen in right of Ontario. *New.*

Garnishment

- 19.**—(1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment or remittance under this Act, he may, by registered letter or by a letter served personally, require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part to the Treasurer on account of the liability under this Act.

Idem

- (2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability
of debtor

- (3) Every person who has discharged any liability to a person liable to make a payment or remittance under this Act without complying with the requirements under this section is liable to pay to the Treasurer an amount equal to the liability discharged or the amount that he was required under this section to pay to the Treasurer, whichever is the lesser.

(4) Where a person who is or is about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carries on business under a name or style other than his own name, the registered or other letter under subsection 1 may be addressed to the name or style under which he carries on business and, in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee. Services of garnishee

(5) Where the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carry on business in partnership, the registered or other letter under subsection 1 may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. *New.* Idem

20.—(1) Every person required to collect the tax imposed by this Act who fails to collect the tax is liable on summary conviction to a fine of not less than \$200 and not more than an amount equal to the amount of tax that should have been collected as determined under subsection 4. Penalty for failure to collect tax

(2) Every employee of a person required to collect the tax imposed by this Act who permits or authorizes or is a party or privy to supplying gasoline or aviation fuel to a purchaser without collecting from the purchaser the tax imposed by this Act is guilty of an offence and on summary conviction is liable to a fine equal to the amount of the tax that should have been collected as determined under subsection 4. Penalty for failure of employee to collect tax

(3) Every person who is required to remit to a collector or to the Treasurer the tax imposed by this Act who fails to remit the tax is guilty of an offence and on summary conviction is liable to a fine of not less than \$200 and not more than an amount equal to the amount of the tax that should have been remitted as determined under subsection 4. Idem

(4) The Minister shall determine the amount of the tax referred to in subsections 1, 2 and 3 from such information as is available to him and shall issue a certificate as to the amount, but except where the Minister considers that there has been deliberate evasion of this Act, he shall not take into account a period of more than three years in determining the amount of tax referred to in the certificate. Idem

Idem

(5) In any prosecution under subsection 1, 2 or 3 a certificate that is signed or that purports to be signed by the Minister or Deputy Minister of Revenue and that states the amount of tax that should have been collected or remitted, as the case may be, is *prima facie* evidence of the amount of tax that should have been collected or remitted and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Idem

(6) Any information in respect of an offence under this Act may be for one or more than one offence, and no information, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Idem

(7) Neither the application of any provision of this section nor the enforcement of any penalty hereunder suspends or affects any remedy for the recovery of any tax payable under this Act. *New.*

Offences

21.—(1) Every person who has failed to deliver a return as and when required by this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not less than \$25 for each day during which the default continues.

Idem

(2) Every person who contravenes section 16 is guilty of an offence and on summary conviction is liable to a fine of \$25 for each day during which the default continues. *New.*

False
statements

22. Every person who has,

- (a) made, participated in, assented to or acquiesced in the making of false or deceptive statements in a return, certificate, statement or answer, delivered or made as required by or under this Act or the regulations;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a purchaser, retailer, wholesaler or collector;
- (c) made, assented to or acquiesced in the making of, false or deceptive entries or omitted, assented to or acquiesced in the omission, to enter a material particular in records or books of account of a purchaser, retailer, wholesaler or collector;

- (d) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act; or
- (e) conspired with any person to commit any offence described in clauses *a* to *d* inclusive,

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on summary conviction to a fine of not less than \$200 and not more than an amount equal to double the amount of the tax that should have been declared to be collectable or payable or that was sought to be evaded, or to imprisonment for a term of not more than two years, or to both. *New.*

23. Every person who contravenes any of the provisions of this Act or the regulations for which no other penalty is provided is guilty of an offence and on summary conviction is liable for a first offence to a fine of not less than \$25 and not more than \$200, and for any subsequent offence to a fine of not less than \$100 and not more than \$500. R.S.O. 1970, c. 190, s. 5, *amended*. General penalty

24. Any officer, director or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in the commission of any act which is an offence under this Act for which the corporation would be liable for prosecution is guilty of an offence and on summary conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. *New.* Officers, etc., of corporations

25. An information in respect of an offence against this Act shall be laid within six years of the time when the matter of the information arose. R.S.O. 1970, c. 190, s. 7, *amended*. Limitation

26. Fines imposed under this Act shall be paid to the Treasurer on behalf of Her Majesty the Queen in right of Ontario, and every penalty imposed by this Act is payable upon and in accordance with the demand of the Minister. R.S.O. 1970, c. 190, s. 8, *amended*. Fines payable to Treasurer

27.—(1) Where a person has remitted to the Treasurer a greater amount of money for a period than was required by this Act to be remitted for that period, or a greater amount than was payable by the person, the Treasurer shall either refund the overpayment or, at the option of the Minister, apply the amount of the overpayment to liability of the person with respect to a previous or subsequent period, in which latter case the Minister shall notify the person of such action. Over-payments

Idem

(2) Where an amount in respect of an overpayment is refunded or applied on other liability, interest at such rate as is prescribed by the regulations shall be paid or applied thereon for the period commencing on the day the overpayment arose and ending with the day of refunding or application on other liability, unless the amount of interest so calculated is less than \$5 in which event no interest need be paid or applied under this subsection.

Idem

(3) Where by a decision of the Minister under section 13 or by a decision of the court it is finally determined that the tax payable under this Act by a person is less than the amount assessed by the assessment to which objection was made or from which the appeal was taken and the decision makes it appear that there has been an overpayment of tax, the interest payable under subsection 2 on the overpayment shall be computed at the rate prescribed by the regulations. *New.*

Refunds

28. Any amount refunded under this Act in excess of the amount to which the person receiving the refund was entitled shall be deemed to be tax owing to the Treasurer, and the sections of this Act relating to the assessment (including objection and appeal therefrom) and collection of taxes apply *mutatis mutandis* to the said amount. *New.*

Relief
from
interest

29. Where, owing to special circumstances, it is considered inequitable that the whole amount of interest imposed by this Act be paid, the Minister may exempt a person from payment of the whole or any part of the interest. *New.*

Communica-
tion of
information

30.—(1) Except as authorized by this section, no person employed by the Government of Ontario shall,

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act. R.S.O. 1970, c. 190, s. 6 (1), *amended.*

Officials not
compellable
as witnesses

(2) Notwithstanding any other Act, but subject to subsection 3, no person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
 - (b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.
- (3) Subsections 1 and 2 do not apply in respect of, Exceptions
for legal
proceedings
- (a) criminal proceedings under any Act of the Parliament of Canada; or
 - (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or
 - (c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax.
- (4) A person employed by the Government of Ontario may, in the course of his duties in connection with the administration or enforcement of this Act, Exception
for internal
adminis-
tration
- (a) communicate or allow to be communicated to an official or authorized person employed by the Government of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and
 - (b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.
- (5) Notwithstanding anything in this Act, the Minister may permit a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to, Exception for
objection or
appeals, etc.
- (a) the person from whom the book, record, writing, return or other document was obtained; or
 - (b) any person,
 - (i) for the purposes of any objection or appeal that has been or may be taken by that person

under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or

- (ii) by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause *a* or *b* or the agent of any such person authorized in writing in that behalf. *New.*

Exception
for tax
enforcement
in other
jurisdictions

(6) Notwithstanding anything in this Act, the Minister may permit information or a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administration of any Act of the Parliament of Canada imposing any tax or duty; or
- (b) a minister of the government of any province of Canada or officer or employee employed under that minister, for the purposes of administering and enforcing an Act of the Legislature of that province imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of another province, as the case may be, is permitted to give to the Minister information or copies of any book, record, writing, return or other document obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that other province, as the case may be, in the administration or enforcement of that Act for the purposes of the administration of this Act. R.S.O. 1970, c. 190, s. 6 (2), *amended*.

Regulations

31. The Lieutenant Governor in Council may make regulations,

- (a) providing for the collection of the tax imposed by this Act;
- (b) requiring the furnishing of surety bonds by persons charged with the collection of the tax imposed by this Act and prescribing the form and amount of such bonds;

- (c) providing for the accounting for and paying over of any sums of money collected by or payable to the persons charged with the collection of the tax imposed by this Act and regulating the time and manner of such accounting and payment;
- (d) prescribing the returns and statements to be made by importers, manufacturers, wholesalers, retailers and purchasers of gasoline or aviation fuel, the information to be given in such returns and statements and by whom and in what manner they shall be made, and prescribing the records to be kept by such persons;
- (e) excluding products from this Act;
- (f) designating products to be aviation fuel;
- (g) exempting any class of persons from the payment of the tax imposed by this Act;
- (h) providing for the refund of the tax paid under this Act, or any portion thereof, to any purchaser or class of purchasers and prescribing the records and material to be furnished upon any application for a refund;
- (i) providing for the refund of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such refund may be made;
- (j) prescribing the rates of interest payable under this Act;
- (k) prescribing forms to be used for the purpose of this Act or the regulations;
- (l) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;
- (m) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1972, c. 13, s. 2, *amended*.

32. *The Gasoline Tax Act and The Gasoline Tax Amendment Act, 1972* are repealed.

R.S.O. 1970,
c. 190,
1972, c. 13,
repealed

Commence-
ment

33. This Act comes into force on the day it receives Royal Assent.

Short title

34. This Act may be cited as *The Gasoline Tax Act, 1973*.

The Gasoline Tax Act, 1973

1st Reading

June 21st, 1973

2nd Reading

October 22nd, 1973

3rd Reading

THE HON. A. GROSSMAN
Minister of Revenue

*(Reprinted as amended by the
Committee of the Whole House)*

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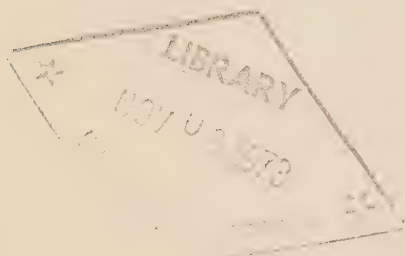
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The Gasoline Tax Act, 1973

THE HON. A. GROSSMAN
Minister of Revenue



TORONTO

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The Gasoline Tax Act, 1973

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "assessment" includes a re-assessment;
- (b) "aviation fuel" means any gas or liquid that is sold to be used or is used to create power in an aircraft and any product that is designated to be aviation fuel by the regulations;
- (c) "collector" means a person appointed in writing by the Minister to be a collector of tax under this Act;
- (d) "gasoline" means any gas or liquid that may be used for the purpose of generating power by means of internal combustion and includes any substance added thereto, but does not include the following products, except when any such product is mixed or combined with gasoline,
 - (i) aviation fuel, except when used or intended to be used to generate power by means of internal combustion in a vehicle other than an aircraft,
 - (ii) the products commonly known as diesel fuel, fuel oil, coal oil or kerosene,
 - (iii) products excluded from this Act by the regulations;
- (e) "importer" means any person, other than a collector, who receives in Ontario gasoline or aviation fuel from a person outside Ontario who is not a collector, or who receives outside Ontario gasoline or aviation

fuel for the purpose of resale in Ontario or for his own use or the use of others at his expense in Ontario;

- (f) "Minister" means the Minister of Revenue;
- (g) "prescribed" means prescribed by the regulations made under this Act;
- (h) "purchaser" means any person purchasing or receiving delivery in Ontario of gasoline or aviation fuel for his own use or for the use of others at his expense, and includes an importer who brings into Ontario gasoline or aviation fuel for his own use or the use of others at his expense;
- (i) "regulations" means the regulations made under this Act;
- (j) "retailer" means a person who sells gasoline or aviation fuel for use by a purchaser and not for resale;
- (k) "Treasurer" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (l) "wholesaler" means a person who sells gasoline or aviation fuel for the purpose of resale. R.S.O. 1970, c. 190, s. 1, *amended*.

Tax payable
by purchaser

2.—(1) Every purchaser of gasoline shall pay to the Treasurer a tax at the rate of 19 cents per imperial gallon on all gasoline purchased or delivery of which is received by him. 1972, c. 13, s. 1.

Tax on
aviation
fuel

(2) Every purchaser of aviation fuel shall pay to the Treasurer a tax at the rate of 3 cents per imperial gallon on all aviation fuel purchased or the delivery of which is received by him. R.S.O. 1970, c. 190, s. 2 (2).

Tax to be
paid at time
of sale

(3) A purchaser, other than an importer, shall pay the tax imposed by this Act at the time of the purchase or delivery, as the case may be. *New*.

Retailer to
collect
tax from
purchaser

3.—(1) No retailer in Ontario shall sell or deliver to a purchaser any gasoline or aviation fuel without collecting from the purchaser the tax imposed by this Act, and for the purpose of collecting such tax every retailer is an agent of the Minister.

Retailer to
pay tax to
collector

(2) Every retailer who is not also a collector shall pay over the tax collected by him to a collector at the time and in the manner required by this Act and the regulations. *New*.

4.—(1) Every importer shall remit to the Treasurer, at the time and in the manner prescribed, the tax payable by him in respect of the gasoline or aviation fuel imported by him into Ontario for his own use or the use of others at his expense. Importers to remit tax

(2) Every importer who sells in Ontario gasoline or aviation fuel shall collect and remit to the Treasurer at the time and in the manner prescribed the tax imposed by this Act in respect of such gasoline or aviation fuel, and for the purpose of collecting such tax every importer is an agent of the Minister. *New.* Idem

5. Every purchaser is liable for the tax imposed by this Act until he has paid it. *New.* Purchaser liable for tax

6.—(1) The Minister may appoint any person who is in the business of manufacturing gasoline or aviation fuel or of selling gasoline or aviation fuel for resale in Ontario to be a collector under this Act. Appointment of collector

(2) No person shall, unless he is a collector, a wholesaler or an importer, sell in Ontario for resale or deliver in Ontario for resale any gasoline or aviation fuel. Only collector, wholesaler or importer may sell in Ontario for resale

(3) Every collector shall at the times and in the manner prescribed collect from any wholesaler, retailer or purchaser to whom the collector sells gasoline or aviation fuel the tax collectable and payable under this Act, and for that purpose every collector is an agent of the Minister for the collection of the tax imposed by this Act and for the remittance thereof to the Treasurer. Collector to collect tax

(4) No collector shall collect the tax imposed by this Act on the sale by him of gasoline or aviation fuel to a collector who is not a purchaser in respect of such gasoline or aviation fuel. Idem

(5) No person appointed a collector under subsection 1 shall thus be made ineligible as a member of the Assembly. *New.* Idem

7.—(1) The Minister may suspend or cancel the appointment of any person appointed to be a collector where, Termination of collector's appointment

(a) the person contravenes any of the provisions of this Act or the regulations; or

(b) the person has not delivered or sold, for resale in Ontario, any gasoline or aviation fuel for a period of three months,

but before a suspension or cancellation is made such person shall be afforded an opportunity to appear before the Minister to show cause why the appointment as a collector should not be suspended or cancelled, as the case may be.

Idem

(2) Notwithstanding subsection 1, where a collector has failed to remit the tax that he has collected or any tax that was payable by him under this Act at the time and in the manner demanded of him, the Minister may, by notice in writing to the collector and without a hearing, suspend forthwith the appointment of the collector, and the notice shall state the failure of the collector for which his appointment is suspended, and the Minister shall, within fifteen days of the service of such notice of suspension, hold a hearing to determine whether the suspension of the collector's appointment should be rescinded or whether the collector's appointment should be cancelled.

Notice
terminating
collector's
appointment

(3) Notice of suspension or cancellation of the appointment of a collector is properly served if served either personally or by registered mail sent to the last known address of the collector. *New.*

Returns

8.—(1) Every collector shall deliver to the Minister, without notice or demand, a return of tax collectable by him at the time and in the manner prescribed in the regulations.

Idem

(2) Every return shall be verified by a certificate of the collector and, if the collector is not an individual, of any one of its officers or its resident manager or representative in Ontario, certifying that the financial and other statements of information included therein or attached thereto are in agreement with the books of the collector and exhibit truly, correctly and completely all information for the period covered by the return.

Failure
to comply

(3) Every collector who fails to comply with subsection 1 of this section shall pay a penalty of \$200.

Incomplete
returns

(4) Every collector who fails to complete the information required in the return to be delivered to the Minister under subsection 1 is guilty of an offence and on summary conviction is liable to a fine of \$200. *New.*

Trans-
mission of
tax

9. Every collector shall remit with the return required by section 8 the amount of the tax payable by him or collectable by him, as the case may be, as shown therein. *New.*

Tax moneys
are trust
moneys

10.—(1) Every person who collects any tax under this Act shall be deemed to hold such tax in trust for Her

Majesty the Queen in right of Ontario and shall remit to the Treasurer all such tax at such times and in such manner as is required by this Act and the regulations.

(2) Every tax that is payable under this Act by a collector ^{Idem} or importer in respect of gasoline or aviation fuel of which he is the purchaser is deemed to be trust moneys in the hands of the collector or importer, as the case may be, held by him in trust for Her Majesty the Queen in right of Ontario, and the collector or importer shall remit to the Treasurer all such tax at the times and in the manner required by this Act and the regulations. *New.*

11.—(1) Where any person fails to make a return or ^{Assessment} remittance as required under this Act or the regulations or if his returns are not substantiated by his records, the Minister may make an assessment of the tax collectable by such person or of the tax, interest or penalty payable by such person, as the case may be, for which he has not accounted.

(2) Where the Minister has made an assessment under sub- ^{Notice of assessment} section 1, he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Treasurer by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

(3) Where the Minister has made an assessment under ^{Notice of assessment under subs. 1} subsection 1, the notice of assessment may provide that the amount owing is payable forthwith.

(4) The Minister may, at any time he considers reasonable, ^{Assessment from time to time} assess or reassess any tax collectable or any tax, interest or penalty payable by any person under this Act or under *The R.S.O. 1970, c. 190 Gasoline Tax Act.*

(5) Where it appears from an inspection, audit or examina- ^{Assessment on inspection} tion of the books of account, records or documents of any collector, wholesaler, retailer or purchaser that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax collectable or payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax collectable or of the tax, interest or penalty payable, as the case may be.

Notice of
assessment
under
subs. 4 or 5

(6) The Minister shall send by mail or by registered mail or deliver by personal service a notice of the assessment made under subsection 4 or 5 to the person so assessed, at his latest known address, or where the person has more than one address, one of which is in Ontario, the notice shall be sent to his address in Ontario, and the notice may provide that the amount owing is payable forthwith.

Continuation
of liability
for tax

(7) Liability for tax imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Minister
not bound
by returns

(8) The Minister is not bound by a return or information delivered by or on behalf of any person under this Act and may, notwithstanding any return or information delivered or if no return or information has been delivered, assess the tax payable under this Act.

Assessment
valid and
binding

(9) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

Idem

(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken.
New.

Unpaid taxes
to bear
interest

12.—(1) Any amount payable or to be remitted to the Treasurer under this Act bears interest, at the rate prescribed by the regulations, from the day on which the amount should have been paid or remitted to the Treasurer to the day of payment.

Payments
applied
first to
interest

(2) Any payment to the Treasurer under this Act, other than a payment of penalties and other than fines imposed for offences, shall first be applied to any interest payable by the person making the payment or on account of whom the payment is made. *New.*

Notice of
objection

13.—(1) Where a person objects to an assessment made under section 11, he may, within ninety days from the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(2) A notice of objection under this section shall be served ^{Service} by being sent by registered mail addressed to the Minister.

(3) Upon receipt of a notice of objection, the Minister shall ^{Reconsideration} with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail. *New.*

14.—(1) After the Minister has given the notification re- ^{Appeal} quired by subsection 3 of section 13, a person who has served notice of objection under section 13 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day notice has been mailed to such person under subsection 3 of section 13, and an appeal under this section shall not be made to the Divisional Court.

(2) An appeal to the Supreme Court shall be instituted ^{Appeal, how instituted} by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the local registrar of the Supreme Court for the county or district in which the person appealing resides or has his place of business.

(3) A notice of appeal shall be served on the Minister by being ^{Service} sent by registered mail addressed to the Minister.

(4) The person appealing shall set out in the notice of ^{Content of notice of appeal} appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in supporting his appeal.

(5) After the service on him of a notice of appeal under ^{Reply to notice of appeal} this section, the Minister shall with all due dispatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on.

(6) Upon the filing of the material referred to in subsec- ^{Matter deemed action} tion 5, the matter shall be deemed to be an action in the court.

(7) The court may dispose of the appeal by, ^{Disposition of appeal}

(a) dismissing it;

(b) allowing it; or

(c) allowing it, and

(i) vacating the assessment,

(ii) varying the assessment,

(iii) restoring the original assessment, or

(iv) referring the assessment back to the Minister for reconsideration and reassessment.

Idem (8) The court may, in delivering judgment disposing of an appeal, order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper.

Procedure (9) The practice and procedure of the Supreme Court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter that is deemed to be an action under subsection 6, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

Irregularities (10) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act.

Extension of time (11) The time within which a notice of objection under subsection 1 of section 13 or a notice of appeal under subsection 1 of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be. *New.*

Records to be kept **15.—**(1) Every collector, importer, wholesaler or retailer shall keep at his principal place of business records and books of account in such form and containing such information as will enable the accurate determination of the taxes collectable or payable under this Act.

Idem (2) Every collector and importer shall, until written permission for their disposal is received from the Minister, retain

every such record or book of account and every account or voucher necessary to verify the information in any such record or book of account. *New.*

16.—(1) Any person thereunto authorized by the Minister <sup>Investiga-
tions</sup> for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises where any business is carried on or any property is kept or anything is done in connection with any business or where any books or records are or should be kept pursuant to this Act, and may,

- (a) audit or examine the books, records, accounts, vouchers, letters, telegrams or other documents that relate or may relate to either the information that is or should be in the books or records or to the amount of tax collectable or payable under this Act;
- (b) examine the property described by an inventory or any property, process or matter, an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax collectable or payable under this Act;
- (c) require a purchaser, retailer, wholesaler, importer or collector liable to collect or pay or considered possibly liable to collect or pay tax under this Act or, if such purchaser, retailer, wholesaler, importer or collector is a partnership or corporation, require a partner or the president, manager, secretary or any director, agent or representative thereof or any other person on the premises of such purchaser, retailer, wholesaler, importer or collector to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration, and for that purpose require such person to attend at the premises with him; and
- (d) if during the course of an audit or examination it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

Idem

(2) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any purchaser, retailer, wholesaler, importer or collector, or if such purchaser, retailer, wholesaler, importer or collector is a partnership or corporation, from a partner or the president, manager, secretary or any director, agent or representative thereof,

(a) any information or a return as required under this Act or the regulations, or

(b) production or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents,

within such reasonable time as is stipulated therein.

Idem

(3) The Minister may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person, partnership, syndicate, trust or corporation holding for or paying or liable to pay any amount to a purchaser, retailer, wholesaler, importer or collector, or from any partner, agent or official of any such person, partnership, syndicate, trust or corporation, production, or production on oath, of any books, letters, accounts, invoices, statements, financial or otherwise, or other documents, within such reasonable time as is stipulated therein.

Idem

(4) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing any officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations and to seize and to take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

Production
of evidence
to prove tax
payable by
another
person

(5) The Minister may, by registered letter or by a demand served personally, require the production, under oath or otherwise, by any person, partnership, syndicate, trust or corporation, or by his or its agent or officer, of any letters, accounts, invoices, statements, financial or otherwise, books or other documents in the possession or in the control of such

person, partnership, syndicate, trust or corporation or of his or its agent or officer for the purpose of determining what tax, if any, is collectable or payable under this Act by any purchaser or collector, and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

(6) Where a book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may make, or cause to be made, one or more copies thereof, and a document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way. Copies

(7) No person shall hinder or molest or interfere with any person doing anything that he is authorized by this section to do or prevent or attempt to prevent any person doing any such thing. Compliance

(8) Notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by this section to do. Idem

(9) Declarations or affidavits in connection with returns delivered under this Act or statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor. *New.* Administra-
tion of
oaths

17. The Minister may extend the time for making any return either before or after the time for making it has expired. *New.* Extended
time for
making
returns

18.—(1) Upon default of payment of an amount assessed under section 11, Recovery
of tax

- (a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his name of office and may be continued by his successor in office as if no change had occurred and shall be tried without a jury; and

- (b) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of a person liable to make a payment or remittance under this Act is located or situate for the amount of the tax, interest and penalty or any of them owing by him, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court.

Compliance
to be proved
by affidavit

- (2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person, partnership, syndicate, trust or corporation to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

Remedies
for recovery
of tax

- (3) The use of any of the remedies provided by this section does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of any tax imposed by this Act are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or at law in favour of Her Majesty the Queen in right of Ontario. *New.*

Garnishment

- 19.**—(1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment or remittance under this Act, he may, by registered letter or by a letter served personally, require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part to the Treasurer on account of the liability under this Act.

Idem

- (2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability
of debtor

- (3) Every person who has discharged any liability to a person liable to make a payment or remittance under this Act without complying with the requirements under this section is liable to pay to the Treasurer an amount equal to the liability discharged or the amount that he was required under this section to pay to the Treasurer, whichever is the lesser.

(4) Where a person who is or is about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carries on business under a name or style other than his own name, the registered or other letter under subsection 1 may be addressed to the name or style under which he carries on business and, in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee. Services of garnishee

(5) Where the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment or remittance under this Act carry on business in partnership, the registered or other letter under subsection 1 may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. *New.* Idem

20.—(1) Every person required to collect the tax imposed by this Act who fails to collect the tax is liable on summary conviction to a fine of not less than \$200 and not more than an amount equal to the amount of tax that should have been collected as determined under subsection 4. Penalty for failure to collect tax

(2) Every employee of a person required to collect the tax imposed by this Act who permits or authorizes or is a party or privy to supplying gasoline or aviation fuel to a purchaser without collecting from the purchaser the tax imposed by this Act is guilty of an offence and on summary conviction is liable to a fine equal to the amount of the tax that should have been collected as determined under subsection 4. Penalty for failure of employee to collect tax

(3) Every person who is required to remit to a collector or to the Treasurer the tax imposed by this Act who fails to remit the tax is guilty of an offence and on summary conviction is liable to a fine of not less than \$200 and not more than an amount equal to the amount of the tax that should have been remitted as determined under subsection 4. Idem

(4) The Minister shall determine the amount of the tax referred to in subsections 1, 2 and 3 from such information as is available to him and shall issue a certificate as to the amount, but except where the Minister considers that there has been deliberate evasion of this Act, he shall not take into account a period of more than three years in determining the amount of tax referred to in the certificate. Idem

Idem

(5) In any prosecution under subsection 1, 2 or 3 a certificate that is signed or that purports to be signed by the Minister or Deputy Minister of Revenue and that states the amount of tax that should have been collected or remitted, as the case may be, is *prima facie* evidence of the amount of tax that should have been collected or remitted and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Idem

(6) Any information in respect of an offence under this Act may be for one or more than one offence, and no information, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Idem

(7) Neither the application of any provision of this section nor the enforcement of any penalty hereunder suspends or affects any remedy for the recovery of any tax payable under this Act. *New.*

Offences

21.—(1) Every person who has failed to deliver a return as and when required by this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not less than \$25 for each day during which the default continues.

Idem

(2) Every person who contravenes section 16 is guilty of an offence and on summary conviction is liable to a fine of \$25 for each day during which the default continues. *New.*

False
statements

22. Every person who has,

- (a) made, participated in, assented to or acquiesced in the making of false or deceptive statements in a return, certificate, statement or answer, delivered or made as required by or under this Act or the regulations;
- (b) to evade payment of a tax imposed by this Act, destroyed, altered, mutilated, secreted or otherwise disposed of the records or books of account of a purchaser, retailer, wholesaler or collector;
- (c) made, assented to or acquiesced in the making of, false or deceptive entries or omitted, assented to or acquiesced in the omission, to enter a material particular in records or books of account of a purchaser, retailer, wholesaler or collector;

- (d) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of taxes imposed by this Act; or
- (e) conspired with any person to commit any offence described in clauses *a* to *d* inclusive,

is guilty of an offence and, in addition to any penalty otherwise provided by this Act, is liable on summary conviction to a fine of not less than \$200 and not more than an amount equal to double the amount of the tax that should have been declared to be collectable or payable or that was sought to be evaded, or to imprisonment for a term of not more than two years, or to both. *New.*

23. Every person who contravenes any of the provisions of this Act or the regulations for which no other penalty is provided is guilty of an offence and on summary conviction is liable for a first offence to a fine of not less than \$25 and not more than \$200, and for any subsequent offence to a fine of not less than \$100 and not more than \$500. R.S.O. 1970, c. 190, s. 5, *amended*. General penalty

24. Any officer, director or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in the commission of any act which is an offence under this Act for which the corporation would be liable for prosecution is guilty of an offence and on summary conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. *New.* Officers, etc., of corporations

25. An information in respect of an offence against this Act shall be laid within six years of the time when the matter of the information arose. R.S.O. 1970, c. 190, s. 7, *amended*. Limitation

26. Fines imposed under this Act shall be paid to the Treasurer on behalf of Her Majesty the Queen in right of Ontario, and every penalty imposed by this Act is payable upon and in accordance with the demand of the Minister. R.S.O. 1970, c. 190, s. 8, *amended*. Fines payable to Treasurer

27.—(1) Where a person has remitted to the Treasurer a greater amount of money for a period than was required by this Act to be remitted for that period, or a greater amount than was payable by the person, the Treasurer shall either refund the overpayment or, at the option of the Minister, apply the amount of the overpayment to liability of the person with respect to a previous or subsequent period, in which latter case the Minister shall notify the person of such action. Over-payments

Idem

(2) Where an amount in respect of an overpayment is refunded or applied on other liability, interest at such rate as is prescribed by the regulations shall be paid or applied thereon for the period commencing on the day the overpayment arose and ending with the day of refunding or application on other liability, unless the amount of interest so calculated is less than \$5 in which event no interest need be paid or applied under this subsection.

Idem

(3) Where by a decision of the Minister under section 13 or by a decision of the court it is finally determined that the tax payable under this Act by a person is less than the amount assessed by the assessment to which objection was made or from which the appeal was taken and the decision makes it appear that there has been an overpayment of tax, the interest payable under subsection 2 on the overpayment shall be computed at the rate prescribed by the regulations. *New.*

Refunds

28. Any amount refunded under this Act in excess of the amount to which the person receiving the refund was entitled shall be deemed to be tax owing to the Treasurer, and the sections of this Act relating to the assessment (including objection and appeal therefrom) and collection of taxes apply *mutatis mutandis* to the said amount. *New.*

Relief
from
interest

29. Where, owing to special circumstances, it is considered inequitable that the whole amount of interest imposed by this Act be paid, the Minister may exempt a person from payment of the whole or any part of the interest. *New.*

Communica-
tion of
information

30.—(1) Except as authorized by this section, no person employed by the Government of Ontario shall,

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister for the purposes of this Act; or
- (b) knowingly allow any person to inspect or to have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act. R.S.O. 1970, c. 190, s. 6 (1), *amended.*

Officials not
compellable
as witnesses

(2) Notwithstanding any other Act, but subject to subsection 3, no person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

- (a) to give evidence relating to any information obtained by or on behalf of the Minister for the purposes of this Act; or
 - (b) to produce any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.
- (3) Subsections 1 and 2 do not apply in respect of, Exceptions
for legal
proceedings
- (a) criminal proceedings under any Act of the Parliament of Canada; or
 - (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or
 - (c) proceedings relating to the administration or enforcement of this Act or the collection or assessment of tax.
- (4) A person employed by the Government of Ontario may, in the course of his duties in connection with the administration or enforcement of this Act, Exception
for internal
adminis-
tration
- (a) communicate or allow to be communicated to an official or authorized person employed by the Government of Ontario in the administration and enforcement of any laws relating to the raising of revenues for provincial purposes any information obtained by or on behalf of the Minister for the purposes of this Act; and
 - (b) allow an official or authorized person employed by the Government of Ontario in the administration or enforcement of any laws relating to the raising of revenues for provincial purposes to inspect or have access to any book, record, writing, return or other document obtained by or on behalf of the Minister for the purposes of this Act.
- (5) Notwithstanding anything in this Act, the Minister may permit a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to, Exception for
objection or
appeals, etc.
- (a) the person from whom the book, record, writing, return or other document was obtained; or
 - (b) any person,
 - (i) for the purposes of any objection or appeal that has been or may be taken by that person

under this Act arising out of any assessment of tax, interest or penalties under this Act in connection with which the book, record, writing, return or other document was obtained, or

- (ii) by whom any amount payable under this Act is payable or has been paid,

or the legal representative of any person mentioned in clause *a* or *b* or the agent of any such person authorized in writing in that behalf. *New.*

Exception
for tax
enforcement
in other
jurisdictions

(6) Notwithstanding anything in this Act, the Minister may permit information or a copy of any book, record, writing, return or other document obtained by him or on his behalf for the purposes of this Act to be given to,

- (a) a minister of the Government of Canada or any officer or employee employed under a minister of the Government of Canada for the purposes of administration of any Act of the Parliament of Canada imposing any tax or duty; or
- (b) a minister of the government of any province of Canada or officer or employee employed under that minister, for the purposes of administering and enforcing an Act of the Legislature of that province imposing any tax or duty,

if the minister of the Government of Canada or the minister of the government of another province, as the case may be, is permitted to give to the Minister information or copies of any book, record, writing, return or other document obtained by or on behalf of the minister of the Government of Canada, or the minister of the government of that other province, as the case may be, in the administration or enforcement of that Act for the purposes of the administration of this Act. R.S.O. 1970, c. 190, s. 6 (2), *amended.*

Regulations

31. The Lieutenant Governor in Council may make regulations,

- (a) providing for the collection of the tax imposed by this Act;
- (b) requiring the furnishing of surety bonds by persons charged with the collection of the tax imposed by this Act and prescribing the form and amount of such bonds;

- (c) providing for the accounting for and paying over of any sums of money collected by or payable to the persons charged with the collection of the tax imposed by this Act and regulating the time and manner of such accounting and payment;
- (d) prescribing the returns and statements to be made by importers, manufacturers, wholesalers, retailers and purchasers of gasoline or aviation fuel, the information to be given in such returns and statements and by whom and in what manner they shall be made, and prescribing the records to be kept by such persons;
- (e) excluding products from this Act;
- (f) designating products to be aviation fuel;
- (g) exempting any class of persons from the payment of the tax imposed by this Act;
- (h) providing for the refund of the tax paid under this Act, or any portion thereof, to any purchaser or class of purchasers and prescribing the records and material to be furnished upon any application for a refund;
- (i) providing for the refund of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such refund may be made;
- (j) prescribing the rates of interest payable under this Act;
- (k) prescribing forms to be used for the purpose of this Act or the regulations;
- (l) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;
- (m) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1972, c. 13, s. 2, *amended*.

32. *The Gasoline Tax Act and The Gasoline Tax Amendment Act, 1972* are repealed.

R.S.O. 1970,
c. 190,
1972, c. 13,
repealed

Commence-
ment

33. This Act comes into force on the day it receives Royal Assent.

Short title

34. This Act may be cited as *The Gasoline Tax Act, 1973*.

The Gasoline Tax Act, 1973

1st Reading

June 21st, 1973

2nd Reading

October 22nd, 1973

3rd Reading

October 22nd, 1973

THE HON. A. GROSSMAN
Minister of Revenue

CA20N

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-B 56

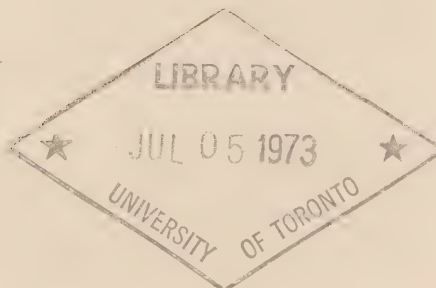
BILL 178

Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act respecting Wilfrid Laurier University

THE HON. J. McNIE
Minister of Colleges and Universities



TORONTO

PRINTED AND PUBLISHED BY THE QUEEN'S PRINTER AND PUBLISHER

EXPLANATORY NOTE

The present corporation known as Waterloo Lutheran University is continued as a theological college, under the name of Waterloo Lutheran Seminary.

A new corporation is established as a non-denominational university under the name of Wilfrid Laurier University, which will take over the operation of the faculties of the academic and administrative services and staff of Waterloo Lutheran University and will acquire certain of the real and personal assets of the present corporation.

An Act respecting Wilfrid Laurier University

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

1.—(1) The body corporate known as “Waterloo Lutheran University” is hereby continued under the name of “Waterloo Lutheran Seminary” and, subject to the provisions of this Act, shall have, hold, possess and enjoy all the property, rights, powers and privileges which it now holds, possesses or enjoys, and all by-laws, orders and regulations of Waterloo Lutheran University in force on the day this Act comes into force shall continue in force until amended or repealed by the Board of Governors or the Senate, as the case may be, of Waterloo Lutheran Seminary, but no such by-law, order or regulation shall apply to Wilfrid Laurier University.

(2) Waterloo Lutheran Seminary shall not possess the power of conferring degrees, except in theology, and its power of conferring degrees in theology is suspended and in abeyance during the period in which Waterloo Lutheran Seminary is federated with Wilfrid Laurier University.

(3) Where, before the passing of this Act, the name “Waterloo College” or “Waterloo University College” was used by Evangelical Lutheran Seminary of Canada or by Waterloo Lutheran University, such name shall for all purposes be taken to mean Wilfrid Laurier University.

(4) Where, before the passing of this Act, the name “Waterloo Seminary” or “Waterloo Lutheran Seminary” was used by Evangelical Lutheran Seminary of Canada or Waterloo Lutheran University, such name shall for all purposes be taken to mean Waterloo Lutheran Seminary continued under this Act.

Lands vested
in Waterloo
Lutheran
Seminary
and the
University

(5) The lands and premises more particularly described and set forth in the Schedule hereto are vested in Waterloo Lutheran Seminary and all other lands and premises vested in Waterloo Lutheran University on the 31st day of October, 1973, are vested in Wilfrid Laurier University on the 1st day of November, 1973.

PART II

Interpre-
tation

2.—(1) In this Part,

- (a) “administrative staff” means the employees of the University and any federated or affiliated college, but does not include persons who are members of faculty;
- (b) “affiliated college” means a college affiliated with the University either directly or through a federated college;
- (c) “alumni” means the former students of Evangelical Lutheran Seminary of Canada, Waterloo College, Waterloo University College, Waterloo Lutheran Seminary, Waterloo Seminary, Waterloo Lutheran University and the University;
- (d) “alumni association” means such organization of alumni as is from time to time recognized as such by the Board of Governors;
- (e) “Board of Governors” means the Board of Governors of the University;
- (f) “Chancellor” means the Chancellor of the University;
- (g) “faculty” means any academic division of the University either so designated by the Board of Governors or determined by the Board of Governors as having status comparable to that of a faculty but being otherwise designated;
- (h) “federated college” means a college federated with the University and includes Waterloo Lutheran Seminary;
- (i) “graduates” means graduates of the University and includes persons who have completed courses of instruction at Evangelical Lutheran Seminary of Canada, Waterloo College, Waterloo University College, Waterloo Lutheran Seminary, Waterloo

Seminary or Waterloo Lutheran University, and persons who have been awarded degrees by Waterloo Lutheran University or by the University of Western Ontario upon the recommendation of the faculty of Waterloo College or Waterloo Lutheran Seminary;

- (j) "member of faculty" means a person employed by the University or by any federated or affiliated college, whose duties are those of performing and administering the teaching and research functions of the University or of any federated or affiliated college, and who is included in the lecturer or professorial ranks, but does not include any such person who is a student;
- (k) "President" means the President of the University;
- (l) "property" includes real and personal property;
- (m) "real property" includes messuages, lands, tenements and hereditaments, whether corporeal or incorporeal, and any undivided share thereof and any estate or interest therein;
- (n) "regular member of faculty" means a member of faculty with tenure or having a probationary term appointment or a full-time definite term appointment;
- (o) "Senate" means the Senate of the University;
- (p) "student" means a person who is registered as such by the University in a program that leads to a degree, diploma or certificate of the University;
- (q) "University" means Wilfrid Laurier University;
- (r) "year" means the membership year of the Board of Governors and the Senate and shall be any twelve-month period established by the Board of Governors from time to time, but the first membership year after this Act comes into force shall be the period from the 1st day of November, 1973, to the 30th day of April, 1974.

(2) In the event of conflict between any provision of this Act^{Conflict} and any provision of *The Corporations Act*, the provision of^{R.S.O. 1970, c. 89} this Act prevails.

3. The Chancellor, the President and such other persons^{University incorporated} who may hereafter become members of the Board of

Governors are hereby created a body corporate with perpetual succession and a common seal to be known under the name of Wilfrid Laurier University.

Objects

4. The objects of the University are the pursuit of learning through scholarship, teaching and research within a spirit of free enquiry and expression.

Powers

5. The University has all powers necessary and incidental to the satisfaction and furtherance of its objects as a University.

Religious
test not
required

6. No religious test shall be required by the University of any of its members of faculty, students, officers or employees, nor shall any religious observance according to the regulations of any particular denomination or sect be imposed upon them or any of them.

Proceedings
in University
name

7. All proceedings by or against the University may be had and taken in the name of Wilfrid Laurier University.

BOARD OF GOVERNORS

Composition

8.—(1) The Board of Governors shall consist of thirty-three members as follows:

1. The Chancellor and the President who shall be *ex officio* members.
2. One member appointed by each of The Regional Municipality of Waterloo, The Corporation of the City of Waterloo and The Corporation of the City of Kitchener.
3. Two members appointed by the Board of Governors of Waterloo Lutheran Seminary.
4. Six members appointed by the Lieutenant Governor in Council.
5. Three members elected by the Senate from among the members of faculty on the Senate.
6. Two members elected by the members of faculty from among the members of faculty.
7. Two members elected by the students from among the students.
8. Two members elected by the administrative staff from among the administrative staff.

9. Three members who are not members of faculty or administrative staff or students appointed by the alumni association from among the alumni.
10. Eight members appointed in the first instance by the Lieutenant Governor in Council and thereafter by the Board of Governors to represent a broad spectrum of the public, provided that such a member shall not be a member of faculty, a member of the administrative staff or a student of the University or of any federated or affiliated college, or a member of the faculty, staff, student body, governing body or senate of any other degree-granting institution of higher learning.

(2) The members to be elected under paragraphs 6, 7 and 8 of subsection 1 shall be elected in such manner and in accordance with such procedures as are determined and established by the Board of Governors. ^{Manner of election}

(3) No person is eligible as a member of the Board of Governors unless he is a Canadian citizen. ^{Canadian citizenship}

9.—(1) Except as provided in subsection 2, all appointed and elected members shall hold office for a period of three years, except that with respect to such members first appointed and elected, the Board of Governors shall determine and select those persons who shall serve for a period of one year, those who shall serve for a period of two years, and those who shall serve for a period of three years. ^{Term of office}

(2) The members referred to in paragraph 7 of subsection 1 of section 8 shall hold office for a period of two years, except that with respect to such members first elected, the Board of Governors shall determine and select the student who shall serve for a period of one year and the student who shall serve for a period of two years. ^{Idem}

10.—(1) The Board of Governors shall elect annually a Chairman and a Vice-Chairman from among its members appointed under paragraphs 4, 9 and 10 of subsection 1 of section 8 and, in the event of the absence or illness of the Chairman, or, in the event of a temporary vacancy in that office, the Vice-Chairman shall act as and have all the powers of the Chairman. ^{Chairman and Vice-Chairman}

(2) In case of the absence or illness of the Chairman and of the Vice-Chairman, the Board of Governors may appoint one of its members to act as chairman *pro tempore* and the member so appointed shall act as and have all the powers of the Chairman. ^{Absence}

Term of
office

(3) The term of office of the Chairman and of the Vice-Chairman is one year, provided that each of them is eligible for re-election.

Quorum

11. The quorum of the Board of Governors, to be designated by by-law of the Board, shall consist of not fewer than twelve members, at least one-half of whom shall consist of members of the Board appointed under paragraphs 4, 9 and 10 of subsection 1 of section 8.

Powers of
the Board of
Governors

12. The government of the University and the control of its property and revenues, the conduct of its business and affairs, except with respect to such matters as are assigned by this Act to the Senate, are vested in the Board of Governors, and the Board of Governors has all powers necessary or convenient to perform its duties and to achieve the objects of the University and, without limiting the generality of the foregoing, has the power to,

- (a) appoint, promote, suspend and remove the President and all other officers of the University, heads and associate heads of faculties, the members of faculty or administrative staff of the University, and all other agents of the University, but no person shall be appointed, promoted, suspended or removed as the head of a faculty or school, as a senior administrative officer or as a member of faculty except on the recommendation of the President;
- (b) grant tenure to a member of faculty of the University and terminate such tenure;
- (c) plan and implement the physical development of the University;
- (d) borrow money for the purpose of the University and give security therefor on such terms and in such amounts as the Board of Governors may consider advisable or as from time to time may be required;
- (e) establish and collect fees and charges for academic tuition and for services of any kind that may be offered by the University and to collect such fees and charges, as approved by the Board of Governors, on behalf of any entity, organization or element of the University;
- (f) regulate the conduct of the members of faculty, students and administrative staff of the University

and of all other persons coming upon and using the lands and premises of the University or deny access thereto;

- (g) establish and enforce rules and regulations with regard to the use and occupancy of its buildings and grounds or other operations;
- (h) provide for the appointment and discharge of committees but, where authority is conferred upon any such committee to act for the Board of Governors with respect to any matter or class of matters, a majority of the members thereof shall be members of the Board of Governors;
- (i) invest all money that comes into its hands and is not required to be expended for any purpose to which it lawfully may be applied, subject always to any express limitations or restrictions on investment powers imposed by the terms of the instruments creating any trust as to the same, in such manner as it considers proper;
- (j) enact by-laws and regulations for the conduct of its affairs; and
- (k) do all such acts and things as are necessary or expedient for the conduct of its affairs and the affairs of the University.

13. The governing body of a federated or affiliated college has jurisdiction over and entire responsibility for the regulation of the conduct of all persons in respect of all matters arising or occurring in or upon its buildings and grounds.

14. The Board of Governors shall determine the proper body within the University to exercise jurisdiction in any matter of discipline that may arise wherein there is a question as to the proper body under which it should come, and the decision of the Board of Governors in such matter is final.

SENATE

15.—(1) There shall be a Senate of the University composed of:

- (a) the following *ex officio* members:

1. The Chancellor.

2. The President.
 3. The Chairman of the Board of Governors.
 4. The head of each federated or affiliated college.
 5. Each Vice-President.
 6. The Dean of each faculty of the University.
 7. The Librarian of the University.
 8. The Registrar of the University.
 9. Such other *ex officio* members as the Senate by by-law may, from time to time, designate;
- (b) The following members, of whom those elected under paragraphs 2 and 5 shall be elected in such manner and in accordance with such procedures as are determined and established by the Senate:
1. Three members of the Board of Governors other than the Chairman thereof, such members to be appointed by that Board from among its members appointed under paragraphs 4, 9 and 10 of subsection 1 of section 8.
 2. Eight members elected by the students from among the students.
 3. Two members appointed by the Senate to represent the secondary school system of Ontario.
 4. Three members who are not members of faculty or administrative staff or students appointed by the alumni association from among the alumni.
 5. Members of faculty equal in number to one more than the total number of all other members of the Senate, provided that,
 - i. one member of faculty shall be elected from each University department, as defined by the Senate, by the members of faculty of each such department,

- ii. two members of faculty shall be elected from each federated or affiliated college by the members of faculty of such college, and
- iii. the remaining members of faculty shall be elected from the regular members of faculty of the University in a manner to be determined by the Senate.

(2) No person is eligible for appointment or election as a member of the Senate who is a member of the faculty, staff, student body, governing body or senate of any degree-granting university, college or other institution of higher learning, other than the University and its federated or affiliated colleges, unless such person is a regular member of faculty.

16.—(1) Except as provided in subsection 2, all appointed and elected members shall hold office for a period of three years, except that with respect to such members first appointed and elected, the Senate shall determine and select those persons who shall serve for a period of one year, those who shall serve for a period of two years, and those who shall serve for a period of three years.

(2) The members referred to in paragraph 2 of clause *b* of subsection 1 of section 15 shall hold office for a period of two years, except that with respect to such members first elected, the Senate shall determine and select those students who shall serve for a period of one year and two years, respectively.

17.—(1) The President of the University is the Chairman of the Senate, and the Vice-President: Academic is the Vice-Chairman thereof.

(2) In case of the absence or illness of the Chairman and of the Vice-Chairman, the Senate may appoint one of its members to act as Chairman *pro tempore* and the member so appointed shall act as and have all the powers of the Chairman.

18.—(1) The Senate shall meet not less than four times a year, either when convened by the President or at such other times as the members of the Senate may appoint, and at such place as the President may designate.

(2) A majority of all the members of the Senate constitutes a quorum.

Questions to
be decided
by vote

(3) All questions before the Senate shall be decided by a majority of the votes of the members present, including the vote of the President or other presiding member of the Senate, unless otherwise determined in the by-laws.

Powers of
the Senate

19. The Senate has the power to establish the educational policies of the University and to make recommendations to the Board of Governors with respect to any matter relative to the operation of the University and, without limiting the generality of the foregoing, has the power to,

- (a) make recommendations to the Board of Governors relative to the establishment, maintenance, modification or termination of organizational structures such as faculties, schools, institutes, departments or chairs within the University;
- (b) establish, maintain, modify or remove curricula of all courses of instruction including extension courses, subject to the approval of the Board of Governors in so far as the expenditure of funds is concerned;
- (c) determine policies concerning the qualifications of members of faculty within the University with respect to appointments, promotions in rank, or the granting and termination of tenure;
- (d) determine standards of admission of students to the University;
- (e) consider and determine the conduct and results of examinations in all faculties;
- (f) hear and determine appeals from the decisions of the faculty councils on applications and examinations by students;
- (g) grant the degrees of Bachelor, Master and Doctor, and diplomas, certificates or other awards in any and all branches of learning taught in the University or in a federated or affiliated college;
- (h) grant honorary degrees in any branch of learning;
- (i) undertake, consider and co-ordinate long-range academic planning;
- (j) consider and recommend to the Board of Governors policies concerning the internal allocation or use of University resources;

- (k) create councils and committees to exercise its powers;
- (l) enact by-laws and regulations for the conduct of its affairs; and
- (m) do all such acts and things as are necessary or expedient for the conduct of its affairs.

BOARD OF GOVERNORS AND SENATE

20.—(1) Subject to subsection 2, members of the Board of Governors and of the Senate are eligible for reappointment or re-election, as the case may be, except that an appointed or elected member shall not serve for more than two consecutive terms, but any such appointed or elected member shall be again eligible for appointment or election after the expiration of one year following the completion of two consecutive terms. Reappointment and re-election

(2) The limit of two consecutive terms referred to in subsection 1 does not include the balance of an unexpired term for a person appointed or elected under section 23 or the first term of those persons first appointed or elected under section 8 or 15. Idem

21.—(1) If, within any year, a member of the Board of Governors or of the Senate, not having been granted permission to be absent by such body, attends less than 50 per cent of the regular meetings of such body, his membership on such body is *ipso facto* vacated and a confirmatory resolution shall be passed by the Board of Governors or by the Senate, as the case may be, declaring the membership vacant. Absence from meetings

(2) A resolution passed under this section and entered in the minutes of the pertinent meeting of the Board of Governors or of the Senate, as the case may be, is conclusive evidence of the vacancy declared therein. Evidence of vacancy

22. If any event occurs which would make any member of the Board of Governors or of the Senate, as the case may be, ineligible by reason of such occurrence to be appointed or elected to such body, his membership on such body is *ipso facto* vacated and a confirmatory resolution shall be passed by the Board of Governors or by the Senate, as the case may be, declaring the membership vacant, except that a student member of the Board of Governors or of the Senate, as the case may be, who graduates during his term of office is entitled to serve for the remainder of such term. Membership vacated

Fillings
vacancies

23. Where a vacancy on the Board of Governors or on the Senate, as the case may be, occurs before the term of office for which a member has been appointed or elected has expired, the vacancy may be filled by the same authority in the same manner as the member whose membership is vacant was appointed or elected, as the case may be, and a member so appointed or elected shall hold office for the remainder of the term of office of the member whose membership is vacant.

Meetings
of Board of
Governors
and Senate
open to
public

24.—(1) Subject to subsection 2, the meetings of the Board of Governors and of the Senate, including committee meetings, shall be open to the public and prior notice of such meetings shall be given to the members and to the public in such manner as the Board of Governors and the Senate by by-law shall respectively determine, and no person shall be excluded therefrom except for improper conduct but, where confidential matters of the University are being considered, that part of the meeting may be held *in camera*.

Exception

(2) Where matters of a personal nature concerning an individual may be disclosed at a meeting, the part of the meeting concerning such individual shall be held *in camera* unless such individual requests that such part of the meeting be open to the public.

Examination
of by-laws

25.—(1) The by-laws of the Board of Governors and of the Senate shall be open to examination by members of the University community and by the public during normal business hours.

Publication
of by-laws

(2) The Board of Governors and the Senate shall publish their by-laws from time to time in such manner as they may respectively consider proper.

CHANCELLOR

Chancellor

26.—(1) There shall be a Chancellor of the University who shall be appointed by the Board of Governors with the concurrence of the Senate and who shall hold office for four years and is eligible for reappointment for one additional term.

Chancellor to
be titular
head, etc.

(2) The Chancellor is the titular head of the University and, subject to subsection 3 of section 27, shall confer all degrees.

Incumbent
Chancellor

(3) The incumbent Chancellor of Waterloo Lutheran University, as of the day this Act comes into force, shall continue as the Chancellor of the University and his term of office for the purpose of this section shall be deemed to have commenced on such day.

PRESIDENT

27.—(1) There shall be a President of the University who ^{President} shall be appointed by the Board of Governors in such manner and for such term as the Board of Governors shall determine following advice thereon from the Senate.

(2) The President is the chief executive officer of the University and has supervision over and direction of the academic work and general administration of the University, the members of faculty, officers, employees and students thereof, and such other powers and duties as from time to time may be conferred upon or assigned to him by the Board of Governors. ^{Powers of President}

(3) In the absence of the Chancellor, or where there is a vacancy in the office, the President shall confer degrees, but if he is absent or unable to act, degrees shall be conferred by such person as the Board of Governors may designate. ^{To confer degrees in absence of Chancellor}

(4) The Board of Governors shall, following advice from the Senate, appoint a Vice-President: Academic and may appoint one or more additional Vice-Presidents and other officers who shall have such powers and duties as may be conferred on them by the Board on the recommendation of the President. ^{Vice-Presidents and other officers}

FEDERATION AND AFFILIATION

28.—(1) The Board of Governors may enter into agreements for the federation or affiliation of the University with another university or institution of higher learning. ^{Federation or affiliation of the University}

(2) The Board of Governors, with the concurrence of the Senate, may enter into agreements for the federation or affiliation of a college with the University. ^{Federation or affiliation with the University}

(3) A federated or affiliated college shall not become either federated or affiliated with any other university, college or institution of higher learning without the approval of the Board of Governors. ^{Approval of federation or affiliation}

(4) Notwithstanding subsection 2, upon the coming into force of this Act, Waterloo Lutheran Seminary shall become federated with the University upon such terms and conditions as may be agreed by the two corporations. ^{Waterloo Lutheran Seminary}

PROPERTY

29. The University has, in addition to the powers, rights and privileges mentioned in section 26 of *The Interpretation Act*, ^{Power to deal with property R.S.O. 1970, c. 225}

Act, power to purchase or otherwise acquire, take or receive, by gift, bequest or devise, and to hold and enjoy without licence in mortmain and without limitation as to the period of holding any estate or property whatsoever, whether real or personal, and to sell, grant, convey, mortgage, lease or otherwise dispose of the same or any part thereof from time to time and as occasion may require, and to acquire other estate or property in addition thereto or in place thereof.

Application
of statute of
limitations

30. All property vested in the University shall, as far as the application thereto of any statute of limitations is concerned, be deemed to have been and to be real property vested in the Crown for the public use of Ontario.

Application
of property

31. The property and the income, revenues, issues and profits of all property of the University shall be applied solely to achieving the objects and purposes of the University.

AUDITORS

Audit of
accounts
R.S.O. 1970,
c. 373

32. The Board of Governors shall appoint one or more auditors licensed under *The Public Accountancy Act* to audit the accounts and transactions of the Board of Governors at least once a year.

ANNUAL REPORTS

Annual
reports to
Minister

33.—(1) The Board of Governors shall make an annual report including an audited financial statement to the Minister of Colleges and Universities in such form and containing such other information as the Minister may require.

Tabling

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Annual
report to
faculty

(3) The Board of Governors shall make available to the members of faculty, administrative staff and students of the University, an annual report which shall include an annual financial report.

GENERAL

Credits
and marks
recognized

34. Wilfrid Laurier University shall grant to all students, former students and graduates, full recognition for all credits and marks awarded by Waterloo Lutheran University before this Act came into force.

35.—(1) Notwithstanding anything in this Act, for the purpose of permitting the appointment or election, as the case may be, prior to the 1st day of November, 1973, of the members of the first Board of Governors and the first Senate to be established and constituted under the provisions of this Act, the Board of Governors of Waterloo Lutheran University and the Senate of Waterloo Lutheran University are hereby respectively authorized and empowered forthwith after this Act receives Royal Assent to act in the place and stead of the first Board of Governors and the first Senate to be established and constituted under the provisions of this Act to do all things necessary as expressed in or implied by or contemplated by or required by reason of this Act to form and constitute the first such Board of Governors and Senate, and without restricting the generality of the foregoing, the Board of Governors of Waterloo Lutheran University and the Senate of Waterloo Lutheran University are hereby respectively authorized and empowered to pass such by-laws, make such findings, establish such election procedures, arrange for the carrying out of such elections and to hold and carry out such elections as may be necessary for the formation and constitution of the first Board of Governors and Senate.

(2) The Board of Governors of Waterloo Lutheran University and the Senate of Waterloo Lutheran University are hereby authorized and empowered to arrange for and call, after completion of the appointment and election of the members of the first Board of Governors and first Senate to be established and constituted under this Act, the first meeting of the Board of Governors and the first meeting of the Senate, such meetings to be held on or after 1st day of November, 1973, the members of the said Board of Governors and the members of the said Senate to be given such notice of the said meetings as shall be deemed reasonable.

36.—(1) The by-laws, orders and regulations made under the authority of any Act by Waterloo Lutheran University shall, in so far as they are not inconsistent with this Part and are capable of being applied, implemented or complied with in the administration of Wilfrid Laurier University be deemed to have been enacted or made under this Part and shall remain in force and effect until re-enacted, amended or repealed under this Part.

(2) On and after the 1st day of November, 1973, the employment contracts, including employee benefits, of every employee of Waterloo Lutheran University, except the employment contracts of employees who are offered employment by, and accept employment with, Waterloo Lutheran Seminary, are obligations in accordance with the terms thereof of

Wilfrid Laurier University and all appointments and tenure held by such employees of Waterloo Lutheran University shall be deemed to have been granted by Wilfrid Laurier University.

Pension
plans

(3) Wilfrid Laurier University shall institute a pension plan or plans for its employees that are equivalent to that provided as of the 31st day of October, 1973, by Waterloo Lutheran University and shall thereby make full provision for all matters necessary to ensure that no such employee shall receive any less benefit than that to which he would have been entitled had the transfer of his employment contract not taken place.

Commence-
ment

37. This Act comes into force on the 1st day of November, 1973.

Short title

38. This Act may be cited as *The Wilfrid Laurier University Act, 1973*.

SCHEDULE A

PARCEL 1

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Waterloo, in The Regional Municipality of Waterloo, formerly in the City of Waterloo and in the County of Waterloo, and in the Province of Ontario, having an area of 3.026 acres and being composed of Lots Numbered 5, 6, 16, 17, 18 and 19 and part of Lots Numbered 1, 2, 3, 4, 7, 8, and 15 all in Block 'C', in A. Oetzel's Survey, Registered Plan Number 514, and part of Lot Number 42, in the subdivision of Lot Number 13, in the German Company Tract, in the said City of Waterloo, more particularly described as follows:

PREMISING that the easterly limit of Albert Street, as widened by By-law Number 2166, Instrument Number 292623, has a bearing of North 38 degrees and 57 minutes West, and relating all bearings herein thereto;

COMMENCING at a point where a standard iron bar is planted on the northerly limit of Bricker Avenue, distant 13.33 feet measured North 63 degrees and 49 minutes East, therealong from the southwesterly angle of Lot Number 1, in Block 'C', in the said Registered Plan Number 514;

THENCE North 38 degrees and 57 minutes West along the easterly limit of Albert Street as widened by By-law Number 2166, Instrument Number 292623, a distance of 399.69 feet to a standard iron bar;

THENCE North 63 degrees and 41 minutes East, a distance of 255.96 feet to an iron bar;

THENCE North 58 degrees 38 minutes and 30 seconds East, a distance of 46.09 feet to an iron bar;

THENCE North 62 degrees 52 minutes and 30 seconds East, a distance of 93.05 feet to an iron bar;

THENCE South 26 degrees and 14 minutes East, a distance of 242.57 feet to an iron bar;

THENCE southeasterly along a non-tangential curve to the right having a radius of 25.00 feet, an arc distance of 17.59 feet, the chord of which has a bearing of South 14 degrees and 21 minutes East, and a distance of 17.23 feet to an iron bar;

THENCE South 9 degrees 04 minutes and 30 seconds West, a distance of 38.24 feet to an iron bar;

THENCE Southeasterly and along a non-tangential curve to the left having a radius of 177.35 feet, an arc distance of 99.99 feet, the chord of which has a bearing of South 5 degrees 38 minutes and 30 seconds East, and a distance of 98.67 feet to an iron bar;

THENCE South 23 degrees 46 minutes and 30 seconds East, a distance of 13.03 feet to a standard iron bar planted on the northerly limit of Bricker Avenue;

THENCE South 63 degrees and 49 minutes West therealong, a distance of 246.02 feet to the point of commencement.

TOGETHER with a right-of-way in, over, along and upon a strip of land in the City of Waterloo, in the Regional Municipality of Waterloo, formerly in the City of Waterloo and in the County of Waterloo, and in the Province of Ontario, being composed of part of Lot Number 42, in the subdivision of Lot Number 13, in the German Company Tract, in the said City of Waterloo, more particularly described as follows:

COMMENCING at a point where a standard iron bar is planted on the northeasterly limit of Albert Street, the said point may be located as follows:

BEGINNING at the southwesterly angle of Lot Number 1, Block 'C' in A. Oetzel's Survey, Registered Plan Number 514, in the said City of Waterloo;

THENCE North 63 degrees and 49 minutes East, a distance of 13.33 feet to a standard iron bar planted on the easterly limit of Albert Street, as widened by By-law Number 2166, Instrument Number 292623;

THENCE North 38 degrees and 57 minutes West therealong, a distance of 399.69 feet to the said point of commencement;

THENCE North 63 degrees and 41 minutes East, a distance of 255.96 feet to an iron bar;

THENCE North 58 degrees 38 minutes and 30 seconds East, a distance of 46.09 feet to an iron bar;

THENCE North 76 degrees 49 minutes and 30 seconds West, a distance of 29.48 feet;

THENCE South 63 degrees and 41 minutes West, a distance of 284.23 feet to a point on the said easterly limit of Albert Street;

THENCE South 38 degrees and 57 minutes East therealong, a distance of 23.37 feet to the point of commencement.

PARCEL 2

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Waterloo, in the Regional Municipality of Waterloo, formerly in the County of Waterloo, and in the Province of Ontario, having an area of 15.670 acres and being composed of Part of Lot Number 3 in the Registered Plan of Subdivision of Lot Number 13, in the German Company Tract, in the said City of Waterloo, more particularly described as follows:

PREMISING that the Southerly limit of Columbia Street has a bearing of North 63 degrees 45 minutes and 30 seconds East and relating all bearings herein thereto;

COMMENCING at a point on the Westerly limit of the said Lot Number 3, distant 100.26 feet, measured northerly therealong from the Southwesterly angle of the said Lot Number 3;

THENCE North 63 degrees and 41 minutes East, a distance of 899.74 feet to the Westerly limit of Phillip Street;

THENCE North 28 degrees and 29 minutes West along the said Westerly limit, a distance of 780.48 feet to a point on the Southerly limit of Columbia Street as widened by By-law Number 1002, (Instrument Number 172259);

THENCE South 63 degrees 45 minutes and 30 seconds West along the said Southerly limit, a distance of 822.00 feet to a point on the Westerly limit of the said Lot Number 3;

THENCE South 19 degrees 15 minutes and 30 seconds East along the said Westerly limit, a distance of 261.37 feet;

THENCE Southerly continuing along the said Westerly limit, along a curve to the left having a radius of 2,831.93 feet, and arc distance of 522.73 feet, the chord of which has a bearing of South 24 degrees and 33 minutes East, and a distance of 521.99 feet to the point of commencement.

SUBJECT to an easement in favour of the Corporation of the City of Waterloo as described in Instrument Number 152086.

An Act respecting
Wilfrid Laurier University

1st Reading

June 21st, 1973

2nd Reading

3rd Reading

THE HON. J. MCNIÉ
Minister of Colleges and Universities

(Government Bill)

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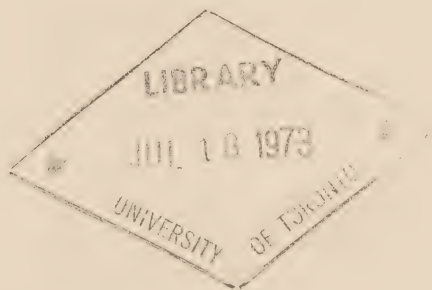
BILL 178

Government
Publications

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act respecting Wilfrid Laurier University

THE HON. J. MCNIE
Minister of Colleges and Universities



BILL 178

1973

An Act respecting Wilfrid Laurier University

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

1.—(1) The body corporate known as “Waterloo Lutheran University” is hereby continued under the name of “Waterloo Lutheran Seminary” and, subject to the provisions of this Act, shall have, hold, possess and enjoy all the property, rights, powers and privileges which it now holds, possesses or enjoys, and all by-laws, orders and regulations of Waterloo Lutheran University in force on the day this Act comes into force shall continue in force until amended or repealed by the Board of Governors or the Senate, as the case may be, of Waterloo Lutheran Seminary, but no such by-law, order or regulation shall apply to Wilfrid Laurier University.

(2) Waterloo Lutheran Seminary shall not possess the Degrees power of conferring degrees, except in theology, and its power of conferring degrees in theology is suspended and in abeyance during the period in which Waterloo Lutheran Seminary is federated with Wilfrid Laurier University.

(3) Where, before the passing of this Act, the name “Waterloo College” or “Waterloo University College” was used by Evangelical Lutheran Seminary of Canada or by Waterloo Lutheran University, such name shall for all purposes be taken to mean Wilfrid Laurier University.

(4) Where, before the passing of this Act, the name “Waterloo Seminary” or “Waterloo Lutheran Seminary” was used by Evangelical Lutheran Seminary of Canada or Waterloo Lutheran University, such name shall for all purposes be taken to mean Waterloo Lutheran Seminary continued under this Act.

Lands vested
in Waterloo
Lutheran
Seminary
and the
University

(5) The lands and premises more particularly described and set forth in the Schedule hereto are vested in Waterloo Lutheran Seminary and all other lands and premises vested in Waterloo Lutheran University on the 31st day of October, 1973, are vested in Wilfrid Laurier University on the 1st day of November, 1973.

PART II

Interpre-
tation

2.—(1) In this Part,

- (a) “administrative staff” means the employees of the University and any federated or affiliated college, but does not include persons who are members of faculty;
- (b) “affiliated college” means a college affiliated with the University either directly or through a federated college;
- (c) “alumni” means the former students of Evangelical Lutheran Seminary of Canada, Waterloo College, Waterloo University College, Waterloo Lutheran Seminary, Waterloo Seminary, Waterloo Lutheran University and the University;
- (d) “alumni association” means such organization of alumni as is from time to time recognized as such by the Board of Governors;
- (e) “Board of Governors” means the Board of Governors of the University;
- (f) “Chancellor” means the Chancellor of the University;
- (g) “faculty” means any academic division of the University either so designated by the Board of Governors or determined by the Board of Governors as having status comparable to that of a faculty but being otherwise designated;
- (h) “federated college” means a college federated with the University and includes Waterloo Lutheran Seminary;
- (i) “graduates” means graduates of the University and includes persons who have completed courses of instruction at Evangelical Lutheran Seminary of Canada, Waterloo College, Waterloo University College, Waterloo Lutheran Seminary, Waterloo

Seminary or Waterloo Lutheran University, and persons who have been awarded degrees by Waterloo Lutheran University or by the University of Western Ontario upon the recommendation of the faculty of Waterloo College or Waterloo Lutheran Seminary;

- (j) “member of faculty” means a person employed by the University or by any federated or affiliated college, whose duties are those of performing and administering the teaching and research functions of the University or of any federated or affiliated college, and who is included in the lecturer or professorial ranks, but does not include any such person who is a student;
- (k) “President” means the President of the University;
- (l) “property” includes real and personal property;
- (m) “real property” includes messuages, lands, tenements and hereditaments, whether corporeal or incorporeal, and any undivided share thereof and any estate or interest therein;
- (n) “regular member of faculty” means a member of faculty with tenure or having a probationary term appointment or a full-time definite term appointment;
- (o) “Senate” means the Senate of the University;
- (p) “student” means a person who is registered as such by the University in a program that leads to a degree, diploma or certificate of the University;
- (q) “University” means Wilfrid Laurier University;
- (r) “year” means the membership year of the Board of Governors and the Senate and shall be any twelve-month period established by the Board of Governors from time to time, but the first membership year after this Act comes into force shall be the period from the 1st day of November, 1973, to the 30th day of April, 1974.

(2) In the event of conflict between any provision of this Act ^{Conflict} and any provision of *The Corporations Act*, the provision of ^{R.S.O. 1970,} this Act prevails. _{c. 89}

3. The Chancellor, the President and such other persons ^{University} who may hereafter become members of the Board of ^{incorporated}

Governors are hereby created a body corporate with perpetual succession and a common seal to be known under the name of Wilfrid Laurier University.

Objects

4. The objects of the University are the pursuit of learning through scholarship, teaching and research within a spirit of free enquiry and expression.

Powers

5. The University has all powers necessary and incidental to the satisfaction and furtherance of its objects as a University.

Religious
test not
required

6. No religious test shall be required by the University of any of its members of faculty, students, officers or employees, nor shall any religious observance according to the regulations of any particular denomination or sect be imposed upon them or any of them.

Proceedings
in University
name

7. All proceedings by or against the University may be had and taken in the name of Wilfrid Laurier University.

BOARD OF GOVERNORS

Composition

8.—(1) The Board of Governors shall consist of thirty-three members as follows:

1. The Chancellor and the President who shall be *ex officio* members.
2. One member appointed by each of The Regional Municipality of Waterloo, The Corporation of the City of Waterloo and The Corporation of the City of Kitchener.
3. Two members appointed by the Board of Governors of Waterloo Lutheran Seminary.
4. Six members appointed by the Lieutenant Governor in Council.
5. Three members elected by the Senate from among the members of faculty on the Senate.
6. Two members elected by the members of faculty from among the members of faculty.
7. Two members elected by the students from among the students.
8. Two members elected by the administrative staff from among the administrative staff.

9. Three members who are not members of faculty or administrative staff or students appointed by the alumni association from among the alumni.

10. Eight members appointed in the first instance by the Lieutenant Governor in Council and thereafter by the Board of Governors to represent a broad spectrum of the public, provided that such a member shall not be a member of faculty, a member of the administrative staff or a student of the University or of any federated or affiliated college, or a member of the faculty, staff, student body, governing body or senate of any other degree-granting institution of higher learning.

(2) The members to be elected under paragraphs 6, 7 and 8 of subsection 1 shall be elected in such manner and in accordance with such procedures as are determined and established by the Board of Governors. ^{Manner of election}

(3) No person is eligible as a member of the Board of Governors unless he is a Canadian citizen. ^{Canadian citizenship}

9.—(1) Except as provided in subsection 2, all appointed and elected members shall hold office for a period of three years, except that with respect to such members first appointed and elected, the Board of Governors shall determine and select those persons who shall serve for a period of one year, those who shall serve for a period of two years, and those who shall serve for a period of three years. ^{Term of office}

(2) The members referred to in paragraph 7 of subsection 1 of section 8 shall hold office for a period of two years, except that with respect to such members first elected, the Board of Governors shall determine and select the student who shall serve for a period of one year and the student who shall serve for a period of two years. ^{Idem}

10.—(1) The Board of Governors shall elect annually a Chairman and a Vice-Chairman from among its members appointed under paragraphs 4, 9 and 10 of subsection 1 of section 8 and, in the event of the absence or illness of the Chairman, or, in the event of a temporary vacancy in that office, the Vice-Chairman shall act as and have all the powers of the Chairman. ^{Chairman and Vice-Chairman}

(2) In case of the absence or illness of the Chairman and of the Vice-Chairman, the Board of Governors may appoint one of its members to act as chairman *pro tempore* and the member so appointed shall act as and have all the powers of the Chairman. ^{Absence}

Term of
office

(3) The term of office of the Chairman and of the Vice-Chairman is one year, provided that each of them is eligible for re-election.

Quorum

11. The quorum of the Board of Governors, to be designated by by-law of the Board, shall consist of not fewer than twelve members, at least one-half of whom shall consist of members of the Board appointed under paragraphs 4, 9 and 10 of subsection 1 of section 8.

Powers of
the Board of
Governors

12. The government of the University and the control of its property and revenues, the conduct of its business and affairs, except with respect to such matters as are assigned by this Act to the Senate, are vested in the Board of Governors, and the Board of Governors has all powers necessary or convenient to perform its duties and to achieve the objects of the University and, without limiting the generality of the foregoing, has the power to,

- (a) appoint, promote, suspend and remove the President and all other officers of the University, heads and associate heads of faculties, the members of faculty or administrative staff of the University, and all other agents of the University, but no person shall be appointed, promoted, suspended or removed as the head of a faculty or school, as a senior administrative officer or as a member of faculty except on the recommendation of the President;
- (b) grant tenure to a member of faculty of the University and terminate such tenure;
- (c) plan and implement the physical development of the University;
- (d) borrow money for the purpose of the University and give security therefor on such terms and in such amounts as the Board of Governors may consider advisable or as from time to time may be required;
- (e) establish and collect fees and charges for academic tuition and for services of any kind that may be offered by the University and to collect such fees and charges, as approved by the Board of Governors, on behalf of any entity, organization or element of the University;
- (f) regulate the conduct of the members of faculty, students and administrative staff of the University

and of all other persons coming upon and using the lands and premises of the University or deny access thereto;

- (g) establish and enforce rules and regulations with regard to the use and occupancy of its buildings and grounds or other operations;
- (h) provide for the appointment and discharge of committees but, where authority is conferred upon any such committee to act for the Board of Governors with respect to any matter or class of matters, a majority of the members thereof shall be members of the Board of Governors;
- (i) invest all money that comes into its hands and is not required to be expended for any purpose to which it lawfully may be applied, subject always to any express limitations or restrictions on investment powers imposed by the terms of the instruments creating any trust as to the same, in such manner as it considers proper;
- (j) enact by-laws and regulations for the conduct of its affairs; and
- (k) do all such acts and things as are necessary or expedient for the conduct of its affairs and the affairs of the University.

13. The governing body of a federated or affiliated college has jurisdiction over and entire responsibility for the regulation of the conduct of all persons in respect of all matters arising or occurring in or upon its buildings and grounds.

14. The Board of Governors shall determine the proper body within the University to exercise jurisdiction in any matter of discipline that may arise wherein there is a question as to the proper body under which it should come, and the decision of the Board of Governors in such matter is final.

SENATE

15.—(1) There shall be a Senate of the University composed of:

- (a) the following *ex officio* members:

1. The Chancellor.

2. The President.
 3. The Chairman of the Board of Governors.
 4. The head of each federated or affiliated college.
 5. Each Vice-President.
 6. The Dean of each faculty of the University.
 7. The Librarian of the University.
 8. The Registrar of the University.
 9. Such other *ex officio* members as the Senate by by-law may, from time to time, designate;
- (b) The following members, of whom those elected under paragraphs 2 and 5 shall be elected in such manner and in accordance with such procedures as are determined and established by the Senate:
1. Three members of the Board of Governors other than the Chairman thereof, such members to be appointed by that Board from among its members appointed under paragraphs 4, 9 and 10 of subsection 1 of section 8.
 2. Eight members elected by the students from among the students.
 3. Two members appointed by the Senate to represent the secondary school system of Ontario.
 4. Three members who are not members of faculty or administrative staff or students appointed by the alumni association from among the alumni.
 5. Members of faculty equal in number to one more than the total number of all other members of the Senate, provided that,
 - i. one member of faculty shall be elected from each University department, as defined by the Senate, by the members of faculty of each such department,

- ii. two members of faculty shall be elected from each federated or affiliated college by the members of faculty of such college, and
- iii. the remaining members of faculty shall be elected from the regular members of faculty of the University in a manner to be determined by the Senate.

(2) No person is eligible for appointment or election as a member of the Senate who is a member of the faculty, staff, student body, governing body or senate of any degree-granting university, college or other institution of higher learning, other than the University and its federated or affiliated colleges, unless such person is a regular member of faculty.

16.—(1) Except as provided in subsection 2, all appointed and elected members shall hold office for a period of three years, except that with respect to such members first appointed and elected, the Senate shall determine and select those persons who shall serve for a period of one year, those who shall serve for a period of two years, and those who shall serve for a period of three years.

(2) The members referred to in paragraph 2 of clause *b* of subsection 1 of section 15 shall hold office for a period of two years, except that with respect to such members first elected, the Senate shall determine and select those students who shall serve for a period of one year and two years, respectively.

17.—(1) The President of the University is the Chairman of the Senate, and the Vice-President: Academic is the Vice-Chairman thereof.

(2) In case of the absence or illness of the Chairman and of the Vice-Chairman, the Senate may appoint one of its members to act as Chairman *pro tempore* and the member so appointed shall act as and have all the powers of the Chairman.

18.—(1) The Senate shall meet not less than four times a year, either when convened by the President or at such other times as the members of the Senate may appoint, and at such place as the President may designate.

(2) A majority of all the members of the Senate constitutes a quorum.

Questions to
be decided
by vote

(3) All questions before the Senate shall be decided by a majority of the votes of the members present, including the vote of the President or other presiding member of the Senate, unless otherwise determined in the by-laws.

Powers of
the Senate

19. The Senate has the power to establish the educational policies of the University and to make recommendations to the Board of Governors with respect to any matter relative to the operation of the University and, without limiting the generality of the foregoing, has the power to,

- (a) make recommendations to the Board of Governors relative to the establishment, maintenance, modification or termination of organizational structures such as faculties, schools, institutes, departments or chairs within the University;
- (b) establish, maintain, modify or remove curricula of all courses of instruction including extension courses, subject to the approval of the Board of Governors in so far as the expenditure of funds is concerned;
- (c) determine policies concerning the qualifications of members of faculty within the University with respect to appointments, promotions in rank, or the granting and termination of tenure;
- (d) determine standards of admission of students to the University;
- (e) consider and determine the conduct and results of examinations in all faculties;
- (f) hear and determine appeals from the decisions of the faculty councils on applications and examinations by students;
- (g) grant the degrees of Bachelor, Master and Doctor, and diplomas, certificates or other awards in any and all branches of learning taught in the University or in a federated or affiliated college;
- (h) grant honorary degrees in any branch of learning;
- (i) undertake, consider and co-ordinate long-range academic planning;
- (j) consider and recommend to the Board of Governors policies concerning the internal allocation or use of University resources;

- (k) create councils and committees to exercise its powers;
- (l) enact by-laws and regulations for the conduct of its affairs; and
- (m) do all such acts and things as are necessary or expedient for the conduct of its affairs.

BOARD OF GOVERNORS AND SENATE

20.—(1) Subject to subsection 2, members of the Board of Governors and of the Senate are eligible for reappointment or re-election, as the case may be, except that an appointed or elected member shall not serve for more than two consecutive terms, but any such appointed or elected member shall be again eligible for appointment or election after the expiration of one year following the completion of two consecutive terms. Reappointment and re-election

(2) The limit of two consecutive terms referred to in subsection 1 does not include the balance of an unexpired term for a person appointed or elected under section 23 or the first term of those persons first appointed or elected under section 8 or 15. Idem

21.—(1) If, within any year, a member of the Board of Governors or of the Senate, not having been granted permission to be absent by such body, attends less than 50 per cent of the regular meetings of such body, his membership on such body is *ipso facto* vacated and a confirmatory resolution shall be passed by the Board of Governors or by the Senate, as the case may be, declaring the membership vacant. Absence from meetings

(2) A resolution passed under this section and entered in the minutes of the pertinent meeting of the Board of Governors or of the Senate, as the case may be, is conclusive evidence of the vacancy declared therein. Evidence of vacancy

22. If any event occurs which would make any member of the Board of Governors or of the Senate, as the case may be, ineligible by reason of such occurrence to be appointed or elected to such body, his membership on such body is *ipso facto* vacated and a confirmatory resolution shall be passed by the Board of Governors or by the Senate, as the case may be, declaring the membership vacant, except that a student member of the Board of Governors or of the Senate, as the case may be, who graduates during his term of office is entitled to serve for the remainder of such term. Membership vacated

Fillings
vacancies

23. Where a vacancy on the Board of Governors or on the Senate, as the case may be, occurs before the term of office for which a member has been appointed or elected has expired, the vacancy may be filled by the same authority in the same manner as the member whose membership is vacant was appointed or elected, as the case may be, and a member so appointed or elected shall hold office for the remainder of the term of office of the member whose membership is vacant.

Meetings
of Board of
Governors
and Senate
open to
public

24.—(1) Subject to subsection 2, the meetings of the Board of Governors and of the Senate, including committee meetings, shall be open to the public and prior notice of such meetings shall be given to the members and to the public in such manner as the Board of Governors and the Senate by by-law shall respectively determine, and no person shall be excluded therefrom except for improper conduct but, where confidential matters of the University are being considered, that part of the meeting may be held *in camera*.

Exception

(2) Where matters of a personal nature concerning an individual may be disclosed at a meeting, the part of the meeting concerning such individual shall be held *in camera* unless such individual requests that such part of the meeting be open to the public.

Examination
of by-laws

25.—(1) The by-laws of the Board of Governors and of the Senate shall be open to examination by members of the University community and by the public during normal business hours.

Publication
of by-laws

(2) The Board of Governors and the Senate shall publish their by-laws from time to time in such manner as they may respectively consider proper.

CHANCELLOR

Chancellor

26.—(1) There shall be a Chancellor of the University who shall be appointed by the Board of Governors with the concurrence of the Senate and who shall hold office for four years and is eligible for reappointment for one additional term.

Chancellor to
be titular
head, etc.

(2) The Chancellor is the titular head of the University and, subject to subsection 3 of section 27, shall confer all degrees.

Incumbent
Chancellor

(3) The incumbent Chancellor of Waterloo Lutheran University, as of the day this Act comes into force, shall continue as the Chancellor of the University and his term of office for the purpose of this section shall be deemed to have commenced on such day.

PRESIDENT

27.—(1) There shall be a President of the University who ^{President} shall be appointed by the Board of Governors in such manner and for such term as the Board of Governors shall determine following advice thereon from the Senate.

(2) The President is the chief executive officer of the University and has supervision over and direction of the academic work and general administration of the University, the members of faculty, officers, employees and students thereof, and such other powers and duties as from time to time may be conferred upon or assigned to him by the Board of Governors. ^{Powers of President}

(3) In the absence of the Chancellor, or where there is a vacancy in the office, the President shall confer degrees, but ^{To confer degrees in absence of Chancellor} if he is absent or unable to act, degrees shall be conferred by such person as the Board of Governors may designate.

(4) The Board of Governors shall, following advice from the Senate, appoint a Vice-President: Academic and may appoint one or more additional Vice-Presidents and other officers who shall have such powers and duties as may be conferred on them by the Board on the recommendation of the President. ^{Vice-Presidents and other officers}

FEDERATION AND AFFILIATION

28.—(1) The Board of Governors may enter into agreements for the federation or affiliation of the University with another university or institution of higher learning. ^{Federation or affiliation of the University}

(2) The Board of Governors, with the concurrence of the Senate, may enter into agreements for the federation or affiliation of a college with the University. ^{Federation or affiliation with the University}

(3) A federated or affiliated college shall not become either federated or affiliated with any other university, college or institution of higher learning without the approval of the Board of Governors. ^{Approval of federation or affiliation}

(4) Notwithstanding subsection 2, upon the coming into force of this Act, Waterloo Lutheran Seminary shall become federated with the University upon such terms and conditions as may be agreed by the two corporations. ^{Waterloo Lutheran Seminary}

PROPERTY

29. The University has, in addition to the powers, rights and privileges mentioned in section 26 of *The Interpretation* ^{Power to deal with property R.S.O. 1970, c. 225}

Act, power to purchase or otherwise acquire, take or receive, by gift, bequest or devise, and to hold and enjoy without licence in mortmain and without limitation as to the period of holding any estate or property whatsoever, whether real or personal, and to sell, grant, convey, mortgage, lease or otherwise dispose of the same or any part thereof from time to time and as occasion may require, and to acquire other estate or property in addition thereto or in place thereof.

Application
of statute of
limitations

30. All property vested in the University shall, as far as the application thereto of any statute of limitations is concerned, be deemed to have been and to be real property vested in the Crown for the public use of Ontario.

Application
of property

31. The property and the income, revenues, issues and profits of all property of the University shall be applied solely to achieving the objects and purposes of the University.

AUDITORS

Audit of
accounts
R.S.O. 1970,
c. 373

32. The Board of Governors shall appoint one or more auditors licensed under *The Public Accountancy Act* to audit the accounts and transactions of the Board of Governors at least once a year.

ANNUAL REPORTS

Annual
reports to
Minister

33.—(1) The Board of Governors shall make an annual report including an audited financial statement to the Minister of Colleges and Universities in such form and containing such other information as the Minister may require.

Tabling

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Annual
report to
faculty

(3) The Board of Governors shall make available to the members of faculty, administrative staff and students of the University, an annual report which shall include an annual financial report.

GENERAL

Credits
and marks
recognized

34. Wilfrid Laurier University shall grant to all students, former students and graduates, full recognition for all credits and marks awarded by Waterloo Lutheran University before this Act came into force.

35.—(1) Notwithstanding anything in this Act, for the purpose of permitting the appointment or election, as the case may be, prior to the 1st day of November, 1973, of the members of the first Board of Governors and the first Senate to be established and constituted under the provisions of this Act, the Board of Governors of Waterloo Lutheran University and the Senate of Waterloo Lutheran University are hereby respectively authorized and empowered forthwith after this Act receives Royal Assent to act in the place and stead of the first Board of Governors and the first Senate to be established and constituted under the provisions of this Act to do all things necessary as expressed in or implied by or contemplated by or required by reason of this Act to form and constitute the first such Board of Governors and Senate, and without restricting the generality of the foregoing, the Board of Governors of Waterloo Lutheran University and the Senate of Waterloo Lutheran University are hereby respectively authorized and empowered to pass such by-laws, make such findings, establish such election procedures, arrange for the carrying out of such elections and to hold and carry out such elections as may be necessary for the formation and constitution of the first Board of Governors and Senate.

First
election and
appointment
of Board of
Governors
and Senate

(2) The Board of Governors of Waterloo Lutheran University and the Senate of Waterloo Lutheran University are hereby authorized and empowered to arrange for and call, after completion of the appointment and election of the members of the first Board of Governors and first Senate to be established and constituted under this Act, the first meeting of the Board of Governors and the first meeting of the Senate, such meetings to be held on or after 1st day of November, 1973, the members of the said Board of Governors and the members of the said Senate to be given such notice of the said meetings as shall be deemed reasonable.

First
meeting

36.—(1) The by-laws, orders and regulations made under the authority of any Act by Waterloo Lutheran University shall, in so far as they are not inconsistent with this Part and are capable of being applied, implemented or complied with in the administration of Wilfrid Laurier University be deemed to have been enacted or made under this Part and shall remain in force and effect until re-enacted, amended or repealed under this Part.

By-laws,
orders,
regulations
continued

(2) On and after the 1st day of November, 1973, the employment contracts, including employee benefits, of every employee of Waterloo Lutheran University, except the employment contracts of employees who are offered employment by, and accept employment with, Waterloo Lutheran Seminary, are obligations in accordance with the terms thereof of

Transfer
of employ-
ment
contracts

Wilfrid Laurier University and all appointments and tenure held by such employees of Waterloo Lutheran University shall be deemed to have been granted by Wilfrid Laurier University.

Pension
plans

(3) Wilfrid Laurier University shall institute a pension plan or plans for its employees that are equivalent to that provided as of the 31st day of October, 1973, by Waterloo Lutheran University and shall thereby make full provision for all matters necessary to ensure that no such employee shall receive any less benefit than that to which he would have been entitled had the transfer of his employment contract not taken place.

Commence-
ment

37. This Act comes into force on the 1st day of November, 1973.

Short title

38. This Act may be cited as *The Wilfrid Laurier University Act, 1973*.

SCHEDULE A

PARCEL 1

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Waterloo, in The Regional Municipality of Waterloo, formerly in the City of Waterloo and in the County of Waterloo, and in the Province of Ontario, having an area of 3.026 acres and being composed of Lots Numbered 5, 6, 16, 17, 18 and 19 and part of Lots Numbered 1, 2, 3, 4, 7, 8, and 15 all in Block 'C', in A. Oetzel's Survey, Registered Plan Number 514, and part of Lot Number 42, in the subdivision of Lot Number 13, in the German Company Tract, in the said City of Waterloo, more particularly described as follows:

PREMISING that the easterly limit of Albert Street, as widened by By-law Number 2166, Instrument Number 292623, has a bearing of North 38 degrees and 57 minutes West, and relating all bearings herein thereto;

COMMENCING at a point where a standard iron bar is planted on the northerly limit of Bricker Avenue, distant 13.33 feet measured North 63 degrees and 49 minutes East, therealong from the southwesterly angle of Lot Number 1, in Block 'C', in the said Registered Plan Number 514;

THENCE North 38 degrees and 57 minutes West along the easterly limit of Albert Street as widened by By-law Number 2166, Instrument Number 292623, a distance of 399.69 feet to a standard iron bar;

THENCE North 63 degrees and 41 minutes East, a distance of 255.96 feet to an iron bar;

THENCE North 58 degrees 38 minutes and 30 seconds East, a distance of 46.09 feet to an iron bar;

THENCE North 62 degrees 52 minutes and 30 seconds East, a distance of 93.05 feet to an iron bar;

THENCE South 26 degrees and 14 minutes East, a distance of 242.57 feet to an iron bar;

THENCE southeasterly along a non-tangential curve to the right having a radius of 25.00 feet, an arc distance of 17.59 feet, the chord of which has a bearing of South 14 degrees and 21 minutes East, and a distance of 17.23 feet to an iron bar;

THENCE South 9 degrees 04 minutes and 30 seconds West, a distance of 38.24 feet to an iron bar;

THENCE Southeasterly and along a non-tangential curve to the left having a radius of 177.35 feet, an arc distance of 99.99 feet, the chord of which has a bearing of South 5 degrees 38 minutes and 30 seconds East, and a distance of 98.67 feet to an iron bar;

THENCE South 23 degrees 46 minutes and 30 seconds East, a distance of 13.03 feet to a standard iron bar planted on the northerly limit of Bricker Avenue;

THENCE South 63 degrees and 49 minutes West therealong, a distance of 246.02 feet to the point of commencement.

TOGETHER with a right-of-way in, over, along and upon a strip of land in the City of Waterloo, in the Regional Municipality of Waterloo, formerly in the City of Waterloo and in the County of Waterloo, and in the Province of Ontario, being composed of part of Lot Number 42, in the subdivision of Lot Number 13, in the German Company Tract, in the said City of Waterloo, more particularly described as follows:

COMMENCING at a point where a standard iron bar is planted on the northeasterly limit of Albert Street, the said point may be located as follows:

BEGINNING at the southwesterly angle of Lot Number 1, Block 'C' in A. Oetzel's Survey, Registered Plan Number 514, in the said City of Waterloo;

THENCE North 63 degrees and 49 minutes East, a distance of 13.33 feet to a standard iron bar planted on the easterly limit of Albert Street, as widened by By-law Number 2166, Instrument Number 292623;

THENCE North 38 degrees and 57 minutes West therealong, a distance of 399.69 feet to the said point of commencement;

THENCE North 63 degrees and 41 minutes East, a distance of 255.96 feet to an iron bar;

THENCE North 58 degrees 38 minutes and 30 seconds East, a distance of 46.09 feet to an iron bar;

THENCE North 76 degrees 49 minutes and 30 seconds West, a distance of 29.48 feet;

THENCE South 63 degrees and 41 minutes West, a distance of 284.23 feet to a point on the said easterly limit of Albert Street;

THENCE South 38 degrees and 57 minutes East therealong, a distance of 23.37 feet to the point of commencement.

PARCEL 2

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Waterloo, in the Regional Municipality of Waterloo, formerly in the County of Waterloo, and in the Province of Ontario, having an area of 15.670 acres and being composed of Part of Lot Number 3 in the Registered Plan of Subdivision of Lot Number 13, in the German Company Tract, in the said City of Waterloo, more particularly described as follows:

PREMISING that the Southerly limit of Columbia Street has a bearing of North 63 degrees 45 minutes and 30 seconds East and relating all bearings herein thereto;

COMMENCING at a point on the Westerly limit of the said Lot Number 3, distant 100.26 feet, measured northerly therealong from the Southwesterly angle of the said Lot Number 3;

THENCE North 63 degrees and 41 minutes East, a distance of 899.74 feet to the Westerly limit of Phillip Street;

THENCE North 28 degrees and 29 minutes West along the said Westerly limit, a distance of 780.48 feet to a point on the Southerly limit of Columbia Street as widened by By-law Number 1002, (Instrument Number 172259);

THENCE South 63 degrees 45 minutes and 30 seconds West along the said Southerly limit, a distance of 822.00 feet to a point on the Westerly limit of the said Lot Number 3;

THENCE South 19 degrees 15 minutes and 30 seconds East along the said Westerly limit, a distance of 261.37 feet;

THENCE Southerly continuing along the said Westerly limit, along a curve to the left having a radius of 2,831.93 feet, and arc distance of 522.73 feet, the chord of which has a bearing of South 24 degrees and 33 minutes East, and a distance of 521.99 feet to the point of commencement.

SUBJECT to an easement in favour of the Corporation of the City of Waterloo as described in Instrument Number 152086.

An Act respecting
Wilfrid Laurier University

1st Reading

June 21st, 1973

2nd Reading

June 22nd, 1973

3rd Reading

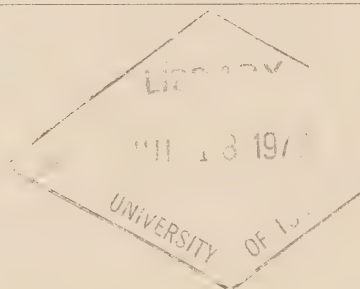
June 22nd, 1973

THE HON. J. MCNIÉ
Minister of Colleges and Universities

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

**An Act to incorporate The Champlain Parks
Development Commission**

MR. SMITH (NIPISSING)



EXPLANATORY NOTE

The Bill provides for the establishment of The Champlain Parks Development Commission.

BILL 179

1973

An Act to incorporate The Champlain Parks Development Commission

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Commission" means The Champlain Parks Development Commission established by this Act;
- (b) "Minister" means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant Governor in Council;
- (c) "Parks" means all land in the City of North Bay, Town of Mattawa, townships of West and East Ferris, Bonfield, Calvin, Mattawan, Orlig, Phelps and Papineau hereafter vested in or placed under the control of the Commission, including highways, roads and boulevards and any interest in land.

2.—(1) There is hereby constituted on behalf of Her Majesty in right of Ontario a corporation without share capital under the name of The Champlain Parks Development Commission, consisting of not more than nine members being,

Commission
established

- (a) one person appointed semi-annually by the council of the Town of Mattawa;
- (b) one person appointed semi-annually by the council of the Township of East Ferris;
- (c) one person appointed semi-annually by the council of the Township of Bonfield;
- (d) two persons appointed semi-annually by the council of the City of North Bay;

- (e) not more than four persons appointed by the Lieutenant Governor in Council for terms of not more than four years.

Chairman
and vice-
chairmen

(2) The Lieutenant Governor in Council shall designate one member as chairman and shall designate two members as vice-chairmen.

Remunera-
tion

(3) The chairman, the vice-chairmen and the other members of the Commission may be paid such remuneration as is fixed by the Lieutenant Governor in Council.

Acting
chairman

(4) In the case of the absence or illness of the chairman or of there being a vacancy in the office of chairman, a vice-chairman or such member of the Commission as the Commission designates for such purpose shall act as and have all the powers of the chairman.

Vacancies

(5) Where a vacancy occurs on the Commission, the body that made the appointment of the member whose office is vacant may appoint a member to hold office for the remainder of the term of his predecessor.

Members of
Assembly
R.S.O. 1970,
c. 240

(6) Notwithstanding *The Legislative Assembly Act*, any member of the Assembly may be appointed as a member of the Commission and is entitled to act as such and receive remuneration therefor without thereby vacating or forfeiting his seat or incurring any other penalty for sitting or voting as a member of the Assembly.

Members of
council
R.S.O. 1970,
c. 284

(7) Subsection 1 of section 36 of *The Municipal Act* does not apply to a member of a municipal council by reason only of his being a member of the Commission or of his being entitled to or receiving remuneration as a member of the Commission.

Quorum

(8) The powers of the Commission may be exercised by a majority of the members.

Executive
committee

3.—(1) The chairman and two vice-chairmen shall be the chief executive officers of the Commission and shall constitute an executive committee which shall be charged with the direction and control of the business of the Commission and it may exercise all of the powers of the Commission in its name, except the making of by-laws, and may, subject to any by-law, delegate such powers as it sees fit to any of the other members of the Commission.

Absence of
chairman

(2) During the incapacity or absence for any reason of the chairman or during a vacancy in the office of the chairman, the first vice-chairman, or in his incapacity or absence the

second vice-chairman, may exercise and perform all the powers and functions of the chairman.

(3) The powers of the executive committee may be exercised ^{Quorum} by a majority of them.

4.—(1) The Lieutenant Governor in Council may appoint ^{Staff} such officers, clerks or other employees as may be necessary for the purposes of the Commission and shall fix their salaries, wages or other remuneration.

(2) All such officers, clerks or other employees so appointed ^{Idem} shall be subject to *The Public Service Act* and shall be civil ser- ^{R.S.O. 1970, c. 386} vants within the meaning of that Act.

5.—(1) It is the duty of the Commission to develop, ^{General powers and duties} control, manage, operate and maintain the Parks and for ^{and} the purposes of carrying out such duty the Commission has power,

- (a) to make such by-laws, rules and orders as may be deemed expedient for the constitution of the Commission and the administration and management of its affairs and the conduct of its business;
- (b) to acquire, construct, operate, maintain and generally manage and provide recreational facilities, restaurants, refreshment booths, stands for the sale of souvenirs and other wares, shops, sanitary and toilet facilities, buses and other vehicles for use in connection with the Parks, boats and boat lines, camp sites and any and all other facilities or conveniences incidental to or necessary for the proper operation and maintenance of the Parks;
- (c) to make agreements with persons with respect to the establishment or operation by them of any works or services in connection with the Parks;
- (d) to operate and maintain a school for the training of apprentice gardeners;
- (e) to receive and take from any person by grant, gift, devise, bequest or otherwise any property real or personal or any interest therein.

(2) It is the duty of the Commission to investigate and ^{General power to investigate matters upon request of Minister, municipality or inhabitant} inquire into any matter or subject affecting or incidental to the welfare of the municipalities of the City of North Bay, Town of Mattawa, townships of West and East Ferris, Bon-

field, Calvin, Mattawan, Orlig, Phelps and Papineau, or any of them, or the inhabitants thereof as may be referred to the Commission by a member of the Executive Council or any such municipality or inhabitant, and the Commission may report thereon to such member, municipality or inhabitant or any of them.

Qualified
powers

6. With the approval of the Lieutenant Governor in Council, the Commission has power,

- (a) to acquire by purchase, lease or otherwise and with or without the consent of the owner enter upon, take and expropriate and sell or otherwise dispose of any land or any interest in land;
- (b) to construct or acquire by purchase, lease or otherwise and operate and maintain bridges over the St. Lawrence River.

Expropria-
tion

R.S.O. 1970,
c. 393

7.—(1) The Commission in the exercise of its powers to take land compulsorily has all the powers conferred by *The Government Services Act* on the Minister of Government Services in relation to a public work, and in the application of this section where the words "the Minister", "the Ministry" or "the Crown" appear in such Act they, where the context permits, mean the Commission, and the taking of such land by the Commission shall be deemed to be for the public purposes of Ontario.

Procedure

(2) The Commission shall proceed in the manner provided by *The Government Services Act* where the Minister of Government Services enters upon, takes or uses land or property for the public purposes of Ontario and all the provisions of that Act apply *mutatis mutandis*.

Vesting
of land

(3) Upon the deposit in the proper registry or land titles office of a plan and description of the land required by the Commission, signed by the chairman of the Commission and by an Ontario land surveyor, the land so described thereupon vests in the Commission.

Highways

8.—(1) Notwithstanding any general or special Act, the Lieutenant Governor in Council may vest any highway in any municipality in the Commission and thereafter the Commission shall have exclusive jurisdiction over it.

Idem

(2) The Commission and any municipality may enter into agreement as to the acquisition by the Commission or by the municipality of any highway or any land therefor or as to the establishing, laying out, opening, grading, paving, altering, constructing, reconstructing, maintaining or repairing of any

highway, including, subject to subsection 3, the cost or the apportionment of the cost of the same and the payment thereof.

(3) Every agreement entered into under subsection 2 shall provide that the cost of any lands acquired pursuant thereto and all compensation payable in respect of such acquisition or for injurious affection to lands by reason of any work undertaken under any such agreement shall be borne and paid solely by the municipality entering into the agreement. ^{Compensation}

9.—(1) The Lieutenant Governor in Council may designate any portion of any of the highways, roads, boulevards or parkways of the Commission as a controlled-access highway. ^{Controlled-access highways}

(2) The Lieutenant Governor in Council may, in respect of any portion of any such highway, road, boulevard or parkway so designated, make any regulation that he may make in respect of controlled-access highways under *The Public Transportation and Highway Improvement Act*. ^{Idem} ^{R.S.O. 1970, c. 201}

10.—(1) The Commission may enter into agreement with any municipality within which any lands of the Commission are situate or that adjoins or is within three miles of the lands of the Commission as to any work of any of the characters or descriptions mentioned in *The Local Improvement Act*, and the Commission may agree to contribute any sum towards the cost of any work undertaken, either in cash or by annual or other instalments or otherwise, but the Commission is not liable in any way for assessment under *The Local Improvement Act* for the cost of any such work, whether the lands abut directly on the work or otherwise. ^{Local improvement works} ^{R.S.O. 1970, c. 255}

(2) It is not necessary to submit any agreement entered into under this section for the assent of the electors of the municipality, nor is it necessary to receive the assent of the electors of the municipality for the issue of debentures to defray the cost of the work undertaken under any such agreement. ^{Idem}

11. All lands of the Commission wherever situate are exempt from assessment or taxation by any municipality. ^{Lands exempt from taxation}

12. The Commission shall cause books to be kept and true and regular accounts to be entered therein of all moneys received and paid and of the several purposes for which the same were received and paid, and such books shall be open to the inspection of any member of the Commission, the Treasurer of Ontario or any person appointed by the Commission or Treasurer for that purpose, and any such person may make copies of or take extracts from the books. ^{Books of account}

Security
by officers

13. Every person who is entrusted by the Commission with the custody or control of money in the course of his employment shall give security in the manner and form provided by *The Public Officers Act*.

R.S.O. 1970,
c. 382

Audit

14. The books and records of the Commission shall be examined annually by the Provincial Auditor or such other auditor as the Lieutenant Governor in Council designates.

Annual
report

15.—(1) The Commission shall make a report annually to the Minister containing such information as the Minister may require.

Idem

(2) A copy of the report shall be filed with the Provincial Secretary who shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly, if it is in session or, if not, at the next ensuing session.

Regulations

16.—(1) The Commission, with the approval of the Lieutenant Governor in Council, may make regulations,

- (a) regulating and governing the use by the public of the Parks and the works, vehicles, boats, services and things under the jurisdiction of the Commission;
- (b) providing for the protection and preservation from damage of the property of the Commission;
- (c) prescribing tolls for the occupation and use of Park lands and works, vehicles, boats, recreational facilities and services under the jurisdiction of the Commission, for opening and closing graves or any class thereof in any cemetery in the Parks, and for entrance to places of historical and scenic interest or any other occupation or uses of a similar nature;
- (d) prescribing permits designating privileges in connection with the use of the Parks or any part thereof and prescribing fees for such permits;
- (e) regulating and governing vehicular and pedestrian traffic in the Parks or any part thereof and prohibiting the use of any class or classes of vehicles in the Parks or any part thereof;
- (f) prohibiting or regulating and governing the erection, posting up or other display of notices, signs, sign boards and other advertising devices in the Parks or within one-quarter mile of any part thereof;

- (g) licensing, regulating and governing taxi-cabs and other vehicles for hire and the owners and drivers thereof, and prescribing fees for such licences;
- (h) licensing, regulating and governing guides and prescribing fees for such licences;
- (i) prescribing terms and conditions under which horses, dogs and other animals may be allowed in the Parks or any part thereof;
- (j) for imposing penalties not exceeding \$100 for any breach of any regulation;
- (k) for such other purposes and objects as are deemed necessary for the carrying out of this Act.

(2) Any offence against any regulation made under this Act is punishable under *The Summary Convictions Act* and the penalty for any such offence is payable to the Treasurer of Ontario. ^{Offences R.S.O. 1970, c. 450}

17. Nothing in this Act authorizes the interference with any right to inter the body of any deceased person in any burying ground vested in the Commission and nothing in this Act confers the right to remove any body there interred. ^{Rights of interment not affected}

18. *The Corporations Act* does not apply to the Commission. ^{R.S.O. 1970, c. 89 not applicable}

19. This Act comes into force on the day it receives Royal Assent. ^{Commencement}

20. This Act may be cited as *The Champlain Parks Development Commission Act, 1973*. ^{Short title}

An Act to incorporate
The Champlain Parks Development
Commission

1st Reading

June 21st, 1973

2nd Reading

3rd Reading

MR. SMITH (NIPissing)

(Private Member's Bill)

CA20N

XB

-B56

BILL 180

Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

**An Act to amend
The Secondary Schools and Boards of Education Act**

THE HON. T. L. WELLS
Minister of Education



TORONTO

PRINTED AND PUBLISHED BY THE QUEEN'S PRINTER AND PUBLISHER

EXPLANATORY NOTES

SECTION 1. The new section provides for the vesting of and disposition of property, the transfer of employment contracts and representation on the board, where an area is transferred from the jurisdiction of one board to the jurisdiction of another or added to the area of jurisdiction of a board.

**An Act to amend
The Secondary Schools and
Boards of Education Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Secondary Schools and Boards of Education Act*, being ^{s. 28a, enacted} chapter 425 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section:

28a.—(1) Where the boundaries of a school division are altered, all lands and premises that, Alteration of
boundaries:
disposition of
assets and
liabilities

- (a) are situate in an area that is added to a school division, school section or secondary school district by such alteration;
- (b) are used as schools on the last school day preceding the effective date of such alteration; and
- (c) immediately prior to the effective date of such alteration are vested in another board of education, public school board or secondary school board except a public school board appointed under section 12 of *The Public Schools Act* and a board appointed or R.S.O. 1970,
c. 385 formed under section 4, under this Act,

shall, on and after such effective date, be vested without compensation, subject to all existing debts, contracts, agreements and liabilities that pertain to such lands and premises, in the board of the school division, school section or secondary school district to which such area is added, and the boards concerned shall agree upon the disposition of all other property situate upon, or used in connection with, such lands and premises.

Dispute

(2) Any dispute as to the disposition of property under subsection 1 may be referred by one or more of the boards concerned to the Ontario Municipal Board, which shall determine the matters in dispute, and its decision is final.

Employment contracts

(3) The employment contract of every employee of a board, who, immediately before the effective date of the alteration of the boundaries of a school division, was required to perform his duties in a school that is vested under subsection 1 in the board of a school division, school section or secondary school district becomes an obligation of the board in which the school is vested.

Representation of municipalities detached and added to another school division

(4) Subject to subsection 8, where one or more municipalities are detached from a school division and attached to an adjoining school division and a member of the board of the school division from which the municipality or municipalities are detached resides in one such municipality and was elected by public school electors to represent such municipality, whether or not the municipality was combined with one or more other municipalities for election purposes, such member shall, on the effective date of the attaching of the municipality or municipalities, cease to be a member of the board to which he was elected and shall on such date and for the remainder of his term of office be deemed,

(a) to have been elected by public school electors to the board of the school division to which the municipality in which he resides is attached; and

(b) to represent on such board the municipality in which he resides and the other municipality or municipalities, if any, that were combined therewith for election purposes under subsection 9 of section 38 at the time of his election and that are also attached to such school division,

and for such period the municipality or combined municipalities so attached shall be deemed to have been determined under subsection 9 of section 38 as a municipality or municipalities to be represented by one member to be elected by the public school electors.

Where board reduced by transfer of area

(5) Where one or more municipalities are detached from a school division and the number of members of the board of such school division elected by public school electors is reduced pursuant to subsection 4, for the remainder of the term of the board the number of members who remain on the board and who were elected by public school electors and the total number of members who remain on the board shall be deemed to be the number of members to be elected by public

SECTION 2. The amendment clarifies the year in which an adjustment will be made in the levy pursuant to a decision by the arbitrators or the Ontario Municipal Board.

school electors under subsection 4 of section 38 and the total number of members determined under subsection 2 of section 38 respectively.

(6) Subject to subsection 8, where a municipality or part thereof is detached from a school division and attached to an adjoining school division, school section or secondary school district, on the effective date thereof and for the remainder of the term of office of the board of the enlarged school division, school section or secondary school district, the public school electors of such municipality or part shall be represented thereon by the member or members last elected thereto by the public school electors of the municipality, combination of municipalities or ward that adjoins the attached municipality or part and, where there are two or more such organized municipalities, combinations of municipalities or wards, the members of the board elected by public school electors shall, by resolution, determine which member or members shall represent the public school electors in the attached municipality or part for the remainder of the term of office of the board, but this subsection does not apply to the municipality or municipalities that will be represented by a member by virtue of subsection 4.

Representation of public school electors of municipality attached to school division

(7) Subject to subsection 8, where one or more municipalities or part or parts thereof are detached from a school division and attached to an adjoining school division or secondary school district, on the effective date thereof and for the remainder of the term of office of the board of the enlarged school division or secondary school district, the separate school supporters in each such municipality or part shall be represented thereon by the member or members last elected thereto by the separate school supporters in the area that adjoins such attached municipality and for which one or more members are elected to represent separate school supporters.

Representation of separate school supporters of municipality attached to school division

(8) Subsections 4, 6 and 7 do not apply where a regular election of the board is to be held in the year preceding the effective date on which the municipality, municipalities or part or parts thereof are attached to the adjoining school division, school section or secondary school district, as the case may be.

Where 6 and 7 do not apply

2. Subsection 12 of section 32 of the said Act is amended by striking out "following year" in the seventh and eighth lines and inserting in lieu thereof "year following the year in which a final decision is received by the board except that, where such decision is received by the board in January, the adjustment shall be made in the levy for the year in which the decision is received".

s. 32 (12), amended

s. 38 (7) (a),
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3.—(1) Clause *a* of subsection 7 of section 38 of the said Act is amended by striking out “under subsection 1 of section 45” in the fifth line.

s. 38 (10) (c),
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(2) Clause *c* of subsection 10 of the said section 38 is amended by striking out “under subsection 2 of section 28” in the second line.

s. 43,
amended

4.—(1) Section 43 of the said Act is amended by adding thereto the following subsection:

Right of
certain pupils
to attend
school in
another
school
division

(1a) Where, on the 31st day of December, 1973, a pupil is enrolled in a public or secondary school that he has a right to attend and the school, on and after the 1st day of January, 1974, is situated in a school division other than the school division in which the pupil resides, the pupil has, in addition to any right that he may have under *The Ministry of Education Act*, *The Public Schools Act*, *The Schools Administration Act* or this Act, subject to subsection 5 of section 63, the right to attend the school until he completes his education in the school, and the divisional boards concerned may enter into an agreement in respect of the transportation to and from school of such pupils.

R.S.O. 1970,
cc. 111, 385,
424

s. 43 (3),
amended

(2) Subsection 3 of the said section 43 is amended by striking out “1” in the first line and inserting in lieu thereof “1, 1a”.

Part V,
re-enacted

5. Part V of the said Act is repealed and the following substituted therefor:

PART V

FRENCH-LANGUAGE SECONDARY SCHOOLS

Interpre-
tation

47. In this Part,

- (a) “board” means a board of education;
- (b) “committee” means a French-language advisory committee formed under this Part;
- (c) “French-language instructional unit” means a class, group of classes, or school in which French is the language of instruction;
- (d) “ratepayer” in respect of a board means a person entitled to vote at an election of members of the board.

French-
language
schools
or classes

48.—(1) A board may establish and maintain secondary schools or classes in secondary schools for the purpose of

SECTION 3. The specific references to sections 28 and 45 are removed so that a determination as to the distribution of members is required in any case where one or more municipalities are attached to or detached from the school division or where the boundaries of the school division are altered.

SECTION 4. The amendments permit a pupil to continue to attend the school that he attends on December 31, 1973, where such school is vested in another board effective January 1, 1974.

SECTION 5. Part V is revised as a result of the recommendations of the Ministerial Commission on French-Language Secondary Education. The amendments,

1. require decisions to be made within the time limits provided;
2. increase the number of members on French-language advisory committees elected by French-speaking ratepayers and provide for representation from school attendance areas where there are French-speaking ratepayers;
3. clarify the matters upon which recommendations may be made by committees;
4. provide for the referral of matters in disagreement by committees to the Languages of Instruction Commission of Ontario;
5. provide for the establishment of English-language advisory committees where the English-speaking pupils are the minority;
6. clarify the relationship between committees and boards.

providing for the use of the French language in instruction, or may enter into an agreement with another board to provide for the admission of resident pupils of the first-mentioned board to one or more French-language instructional units operated by such other board.

(2) Where, after the first school day in September and on or before the 1st day of April in any year, written evidence is presented to a board that a number of French-speaking pupils resident in the secondary school district have elected to be taught in the French language, the board shall forthwith determine whether French-speaking pupils can be assembled for this purpose in one or more classes or groups of twenty or more and, where the board determines that such pupils can be so assembled, it shall provide for the use of the French language in instruction in such classes or groups commencing on the first school day in the following school year. French-language schools

(3) Where the evidence referred to in subsection 2 is presented to the board after the 1st day of April and before the first school day in September in any year, the board shall make the determination required under subsection 2 and, where the board determines that French-speaking pupils can be assembled in classes or groups of twenty or more for the use of the French language in instruction, the board may, commencing on the first school day in January of the following year, and shall, commencing on the first school day in September of such following year, provide for the use of the French language in instruction in such classes or groups. Idem

(4) Where a board provides or is required to provide for the use of the French language in instruction in one or more classes in a secondary school and in the opinion of the board the number of French-speaking pupils who elect to be taught in the French language so warrants, the board shall provide an appropriate unit of a secondary school or, where practicable, a French-language secondary school. French-language secondary schools

(5) Where a board determines that the number of French-speaking pupils who elect to be taught in the French language is not sufficient to justify the establishment of a French-language secondary school, the board shall, in respect of the education of such pupils, consider the possibility of entering into an agreement with another board under subsection 1 of section 60 of this Act or section 36 of *The Schools Administration Act*. Agreement with another board
R.S.O. 1970, c. 424

Establish-
ment of
committee

49.—(1) Where,

- (a) ten or more French-speaking ratepayers of a secondary school district apply in writing to the board for the establishment or extension in a secondary school of a class, group or program in which the French language is or is to be used in instruction; or
- (b) a board establishes or extends or decides to establish or extend a class, group or program in which the French language is or is to be used in instruction,

the board shall, within two months of the application, establishment, extension or decision to establish or extend, by resolution, establish a Committee and provide for the holding of elections of members thereof, and such elections shall, subject to subsection 6, be held within such period.

Composition

(2) The Committee shall consist of nine members and shall be composed of,

- (a) three members of the board appointed by the board; and
- (b) six French-speaking ratepayers who are not members of the board but have the qualifications required for members of the board, elected by French-speaking ratepayers of the secondary school district.

Member of
elementary
board

(3) A member of the committee under clause *b* of subsection 2 may be a member of an elementary school board.

Term of
office

(4) A member of a committee shall hold office during the term of the members of the board and until a new board is organized.

Apportion-
ment of
members

(5) The board, subject to subsection 8, shall apportion the number of members under clause *b* of subsection 2 among the attendance areas of the secondary schools under the jurisdiction of the board as nearly as is practicable in the proportion that the number of French-speaking pupils from each attendance area who elect to be taught in the French language bears to the total number of such pupils within the jurisdiction of the board and, where an attendance area that has French-speaking pupils who elect to be taught in the French language does not have enough such pupils to be entitled to a member on the committee, such attendance area shall be combined with one or more other attendance areas for the purpose of representation on the committee.

(6) The board shall make provision for a meeting of its French-speaking ratepayers in respect of each attendance area or combined attendance area to which one or more members are apportioned under subsection 5 for the purpose of electing such member or members to the committee, and shall advertise in each of its schools the place, date and time of the meeting, and take such additional action to publicize the meeting as it considers expedient.

Meetings
of French-
speaking
ratepayers
to elect
committee
members

(7) Where the election of members of a committee under subsection 1 would otherwise be held within three months before the date of the regular election of members of the board, the election required under subsection 1 shall be held in accordance with section 50.

Idem

(8) For the purposes of the second and subsequent elections of members to a committee, the board shall consult with the committee before making the apportionment referred to in subsection 5 and shall make such apportionment on or before the 1st day of December in the year of a regular election of the board.

Consultation
with
committee re
apportion-
ment

(9) Where a French-language committee has been established by a board before this section comes into force and the members thereof have not been appointed or elected in accordance with this section, the board shall establish a committee in accordance with this section, and elections of members of the committee shall be held before the 31st day of October, 1973, and the French-language committee established before this section comes into force is dissolved as of the date upon which such election is completed.

Committee
to be
established
in accordance
with this
section

50. Where a committee has been established and a new board has been elected, a meeting provided under subsection 6 of section 49 to elect a member or members to the committee shall be held, on or before the second Wednesday following the first meeting of the newly-elected board, commencing at 8 o'clock in the afternoon on such date and at such place as the board may determine, and such meeting may also consider any other matters brought before it, and the provisions of subsection 6 of section 49 respecting the publicizing of the meeting apply.

French-
speaking
ratepayers
to elect
subsequent
members to
committee

51.—(1) The secretary of the board or a person appointed by the board shall call to order each meeting of French-speaking ratepayers under sections 49 and 50 and shall preside thereat for the purpose of electing a chairman of the meeting.

Election of
chairman of
meeting

(2) The chairman of a meeting shall appoint a secretary who shall record the proceedings of the meeting and perform such other duties as are required by the chairman.

Secretary of
meeting

Procedure at
meeting

(3) The chairman of a meeting shall conduct the election of the member or members of the committee to be elected at such meeting and shall submit all motions to the meeting in the manner desired by the majority, and the chairman is entitled to vote on any motion and, in the case of an equality of votes with respect to the election of a member of the committee, the chairman shall provide for drawing lots to determine which of the candidates is elected and a motion on which there is an equality of votes is deemed to be lost.

Notice of
result of
election

(4) Notice in writing shall be given by the secretary of a meeting to the secretary of the board designating by their names and addresses the person or persons elected as members of the committee.

Chairman
and vice-
chairman of
committee

52.—(1) At the first meeting of the committee, the members shall elect from among themselves a chairman and a vice-chairman.

Quorum

(2) A majority of the members of the committee constitutes a quorum, and the vote of a majority of the members present at a meeting is necessary to bind the committee.

Vote of
chairman,
equality
of votes

(3) On every motion, the chairman may vote, and any motion on which there is an equality of votes shall be deemed to be lost.

Special
meeting

(4) A special meeting of the committee may be called by the chairman of the committee and shall be called by the chairman upon the request in writing of two members of the committee who shall specify the objects for which the meeting is to be held, and the objects shall be stated in the notice calling the meeting.

Vacancies

53. Every vacancy on a committee for any cause shall be filled by appointment by the board in the case of appointed members and by the elected members of the committee in the case of elected members and every person so appointed shall hold office for the unexpired term of the member whose seat has become vacant.

Recommen-
dations

54.—(1) A Committee is responsible for developing proposals designed to meet the educational and cultural needs of the French-speaking pupils and the French-speaking community and for such purpose may make recommendations in respect of,

- (a) the provision of suitable sites, accommodation and equipment;

- (b) the establishment, operation and management of French-language instructional units;
- (c) the use of the French language and of the English language in French-language instructional units;
- (d) the recruitment and appointment of the required teaching, supervisory and administrative personnel;
- (e) the establishment of the courses of study and the use of text books;
- (f) the development and establishment of special education programs;
- (g) the establishment of attendance areas for French-language instructional units;
- (h) the provision of transportation for pupils;
- (i) the entering into agreements with other boards in respect of the provision of instruction in the French language and supervisory and consultative services;
- (j) the provision of board, lodging and transportation for pupils;
- (k) the development and establishment of adult education programs;
- (l) the use of any facility and means necessary to meet the educational and cultural needs of the French-speaking community;
- (m) the provision of summer school programs; and
- (n) any other matter pertaining to French language education for French-speaking pupils.

(2) The committee shall report at each regular meeting of the board. Committee
report to
board

(3) The board shall seek the advice of the committee on all matters affecting the establishment, program, administration and termination of French-language instructional units before any final decision regarding such matters is taken by the board and shall provide adequate accommodation and staff to implement the decision of the board. Board to
seek advice
of committee

(4) The board shall consider any recommendation submitted to it in writing by the committee and shall not refuse its approval Consideration
of recommen-
dations by
board

without having given the committee an opportunity to be heard by the board or by any committee of the board to which such recommendation is referred and, where a board refuses a recommendation of the committee, it shall, within thirty days after receiving the recommendation of the committee, forward to the committee written reasons for its refusal.

Referral by
committee to
Languages of
Instruction
Commission

(5) Upon receipt of a refusal and the reasons therefor under subsection 4, the committee may, by motion, refer the matter to the Languages of Instruction Commission of Ontario, in which case it shall send to the Commission and to the board copies of the motion, the recommendation of the committee and the written reasons of the board for its refusal.

Attendance
of committee
chairman at
board
committee
meeting

55.—(1) The chairman of the committee or a member of the committee designated by him may attend any meeting of a committee of the board and shall be given the opportunity to be heard at such meeting in respect of any matter that affects French-speaking pupils and that is within the jurisdiction of such committee of the board.

Distribution
of adminis-
trative
materials

(2) Notices, agendas and minutes in respect of meetings of the board shall be distributed to the members of the committee together with such supporting documents as may be agreed upon by the board and the committee.

Formation
of sub-
committee

(3) The committee may, at its discretion, form subcommittees to assist it in its work.

Committee
may hold
public
meetings

(4) The committee may hold such public meetings to report upon its work as it considers necessary or desirable.

Resources and
services to
be provided by
board

56.—(1) The board shall make available to the committee the resources and services provided for a committee of the board.

Annual
report of
committee

(2) The chairman of the committee shall cause to be prepared in French and English an annual report, and the report shall be included in that of the board where the board publishes a report.

Services of
professional
staff to be
provided

(3) The committee may, through the chief executive officer of the board, obtain the advice and assistance of such supervisory officers and teachers employed by the board as the committee may request.

Honorarium

57.—(1) Each member of the committee who is not a member of the board shall receive an honorarium in accordance with subsection 1 of section 40 of *The Schools Administration Act*, except that the maximum honorarium shall be based upon the enrolment in French-language instructional units and subsection 7 of the said section 40 applies *mutatis mutandis* to such member.

R.S.O. 1970,
c. 424

(2) The board may authorize a member of the committee to attend on the same basis as a member of the board such conferences and meetings as the board considers necessary or desirable for the effective functioning of the committee, and subsections 5 and 6 of section 40 of *The Schools Administration Act* apply *mutatis mutandis* to a member of the committee.

Attendance
at meetings
and
conferences

R.S.O. 1970,
c. 424

(3) The board may, on behalf of the members of the committee, pay all or part of a fee required for membership in a provincial association of French-language committees.

Provincial
association
membership
fee

58. Notwithstanding any other provisions in this Part, English shall be an obligatory daily subject of instruction for every pupil of grades 9 to 12 inclusive who is enrolled in a French-language instructional unit and shall be a required subject for a certificate and diploma issued to such a pupil.

English
as subject
required in
grades 9 to 12

58a.—(1) Where a board has provided one or more French-language secondary schools and a number of pupils of the board elect to be taught in the English language, section 48 applies *mutatis mutandis* in respect of provision for the use of the English language in instruction.

English-
language
classes where
French-
language
school or
classes
established

(2) Where the number of English-speaking pupils of a board is fewer than the number of pupils of the board for whom French is the language of instruction and,

Establish-
ment of
English-
language
advisory
committee

(a) ten or more English-speaking ratepayers of the secondary school district apply in writing to the board for the establishment or extension in a secondary school of a class, group or program in which the English language is or is to be used in instruction; or

(b) the board establishes or extends or decides to establish or extend a class, group or program in which the English language is or is to be used in instruction,

the board shall establish an English-language advisory committee, and the provisions of this Part that apply to a committee in respect of the French-speaking ratepayers, pupils and community and in respect of French-language instructional units apply *mutatis mutandis* to an English-language advisory committee in respect of the English-speaking ratepayers, pupils and community and in respect of schools or classes in which English is the language of instruction.

58b.—(1) A board, on the request of an English-speaking pupil of the board or, where the pupil is a minor, of his parent or guardian, may admit the pupil to a French-language

Admission
of pupils
other than
French-
speaking
pupils

An Act to amend The Secondary Schools
and Boards of Education Act

1st Reading

June 22nd, 1973

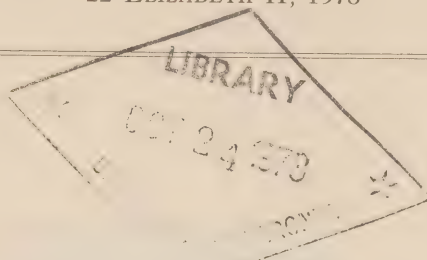
2nd Reading

3rd Reading

THE HON. T. L. WELLS
Minister of Education

(Government Bill)

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973



**An Act to amend
The Secondary Schools and Boards of Education Act**

THE HON. T. L. WELLS
Minister of Education

(Reprinted as amended by the Committee of the Whole House)

TORONTO

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EXPLANATORY NOTES

SECTION 1. The new section provides for the vesting of and disposition of property, the transfer of employment contracts and representation on the board, where an area is transferred from the jurisdiction of one board to the jurisdiction of another or added to the area of jurisdiction of a board.

**An Act to amend
The Secondary Schools and
Boards of Education Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Secondary Schools and Boards of Education Act*, being chapter 425 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section:

28a.—(1) Where the boundaries of a school division are altered, all lands and premises that,

s. 28a,
enacted
Alteration of
boundaries:
disposition of
assets and
liabilities

- (a) are situate in an area that is added to a school division, school section or secondary school district by such alteration;
- (b) are used as schools on the last school day preceding the effective date of such alteration; and
- (c) immediately prior to the effective date of such alteration are vested in another board of education, public school board or secondary school board except a public school board appointed under section 12 of *The Public Schools Act* and a board appointed or formed under section 4 of this Act,

R.S.O. 1970,
c. 385

shall, on and after such effective date, be vested without compensation, subject to all existing debts, contracts, agreements and liabilities that pertain to such lands and premises, in the board of the school division, school section or secondary school district to which such area is added, and the boards concerned shall agree upon the disposition of all other property situate upon, or used in connection with, such lands and premises.

Dispute

(2) Any dispute as to the disposition of property under subsection 1 may be referred by one or more of the boards concerned to the Ontario Municipal Board, which shall determine the matters in dispute, and its decision is final.

Employment contracts

(3) The employment contract of every employee of a board who, immediately before the effective date of the alteration of the boundaries of a school division, was required to perform his duties in a school that is vested under subsection 1 in the board of a school division, school section or secondary school district becomes an obligation of the board in which the school is vested.

Representation of municipalities detached and added to another school division

(4) Subject to subsection 8, where one or more municipalities are detached from a school division and attached to an adjoining school division and a member of the board of the school division from which the municipality or municipalities are detached resides in one such municipality and was elected by public school electors to represent such municipality, whether or not the municipality was combined with one or more other municipalities for election purposes, such member shall, on the effective date of the attaching of the municipality or municipalities, cease to be a member of the board to which he was elected and shall on such date and for the remainder of his term of office be deemed,

- (a) to have been elected by public school electors to the board of the school division to which the municipality in which he resides is attached; and
- (b) to represent on such board the municipality in which he resides and the other municipality or municipalities, if any, that were combined therewith for election purposes under subsection 9 of section 38 at the time of his election and that are also attached to such school division,

and for such period the municipality or combined municipalities so attached shall be deemed to have been determined under subsection 9 of section 38 as a municipality or municipalities to be represented by one member to be elected by the public school electors.

Where board reduced by transfer of area

(5) Where one or more municipalities are detached from a school division and the number of members of the board of such school division elected by public school electors is reduced pursuant to subsection 4, for the remainder of the term of the board the number of members who remain on the board and who were elected by public school electors and the total number of members who remain on the board shall be deemed to be the number of members to be elected by public

SECTION 2. The amendment clarifies the year in which an adjustment will be made in the levy pursuant to a decision by the arbitrators or the Ontario Municipal Board.

school electors under subsection 4 of section 38 and the total number of members determined under subsection 2 of section 38 respectively.

(6) Subject to subsection 8, where a municipality or part thereof is detached from a school division and attached to an adjoining school division, school section or secondary school district, on the effective date thereof and for the remainder of the term of office of the board of the enlarged school division, school section or secondary school district, the public school electors of such municipality or part shall be represented thereon by the member or members last elected thereto by the public school electors of the municipality, combination of municipalities or ward that adjoins the attached municipality or part and, where there are two or more such organized municipalities, combinations of municipalities or wards, the members of the board elected by public school electors shall, by resolution, determine which member or members shall represent the public school electors in the attached municipality or part for the remainder of the term of office of the board, but this subsection does not apply to the municipality or municipalities that will be represented by a member by virtue of subsection 4.

Representation of public school electors of municipality attached to school division

(7) Subject to subsection 8, where one or more municipalities or part or parts thereof are detached from a school division and attached to an adjoining school division or secondary school district, on the effective date thereof and for the remainder of the term of office of the board of the enlarged school division or secondary school district, the separate school supporters in each such municipality or part shall be represented thereon by the member or members last elected thereto by the separate school electors in the area that adjoins such attached municipality and for which one or more members are elected to represent separate school supporters.

Representation of separate school supporters of municipality attached to school division

(8) Subsections 4, 6 and 7 do not apply where a regular election of the board is to be held in the year preceding the effective date on which the municipality, municipalities or part or parts thereof are attached to the adjoining school division, school section or secondary school district, as the case may be.

Where subss. 4, 6 and 7 do not apply

2. Subsection 12 of section 32 of the said Act is amended by striking out "following year" in the seventh and eighth lines and inserting in lieu thereof "year following the year in which a final decision is received by the board except that, where such decision is received by the board in January, the adjustment shall be made in the levy for the year in which the decision is received".

s. 32 (12), amended

s. 38 (7) (a),
amended

3.—(1) Clause *a* of subsection 7 of section 38 of the said Act is amended by striking out “under subsection 1 of section 45” in the fifth line.

s. 38 (10) (c),
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(2) Clause *c* of subsection 10 of the said section 38 is amended by striking out “under subsection 2 of section 28” in the second line.

s. 43,
amended

4.—(1) Section 43 of the said Act is amended by adding thereto the following subsection:

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to attend
school in
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school
division

(1a) Where, on the 31st day of December, 1973, a pupil is enrolled in a public or secondary school that he has a right to attend and the school, on and after the 1st day of January, 1974, is situated in a school division other than the school division in which the pupil resides, the pupil has, in addition to any right that he may have under *The Ministry of Education Act*, *The Public Schools Act*, *The Schools Administration Act* or this Act, subject to subsection 5 of section 63, the right to attend the school until he completes his education in the school, and the divisional boards concerned may enter into an agreement in respect of the transportation to and from school of such pupils.

R.S.O. 1970,
cc. 111, 385,
424

s. 43 (3),
amended

(2) Subsection 3 of the said section 43 is amended by striking out “1” in the first line and inserting in lieu thereof “1, 1a”.

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re-enacted

5. Part V of the said Act is repealed and the following substituted therefor:

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FRENCH-LANGUAGE SECONDARY SCHOOLS

Interpre-
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- (a) “board” means a board of education;
- (b) “committee” means a French-language advisory committee formed under this Part;
- (c) “French-language instructional unit” means a class, group of classes, or school in which French is the language of instruction;
- (d) “ratepayer” in respect of a board means a person entitled to vote at an election of members of the board.

French-
language
schools
or classes

48.—(1) A board may establish and maintain secondary schools or classes in secondary schools for the purpose of

SECTION 3. The specific references to sections 28 and 45 are removed so that a determination as to the distribution of members is required in any case where one or more municipalities are attached to or detached from the school division or where the boundaries of the school division are altered.

SECTION 4. The amendments permit a pupil to continue to attend the school that he attends on December 31, 1973, where such school is vested in another board effective January 1, 1974.

SECTION 5. Part V is revised as a result of the recommendations of the Ministerial Commission on French-Language Secondary Education. The amendments,

1. require decisions to be made within the time limits provided;
2. increase the number of members on French-language advisory committees elected by French-speaking ratepayers and provide for representation from school attendance areas where there are French-speaking ratepayers;
3. clarify the matters upon which recommendations may be made by committees;
4. provide for the referral of matters in disagreement by committees to the Languages of Instruction Commission of Ontario;
5. provide for the establishment of English-language advisory committees where the English-speaking pupils are the minority;
6. clarify the relationship between committees and boards.

providing for the use of the French language in instruction, or may enter into an agreement with another board to provide for the admission of resident pupils of the first-mentioned board to one or more French-language instructional units operated by such other board.

(2) Where, after the first school day in September and on or before the 1st day of April in any year, written evidence is presented to a board that a number of French-speaking pupils resident in the secondary school district have elected to be taught in the French language, the board shall forthwith determine whether French-speaking pupils can be assembled for this purpose in one or more classes or groups of twenty or more and, where the board determines that such pupils can be so assembled, it shall provide for the use of the French language in instruction in such classes or groups commencing on the first school day in the following school year. French-language schools

(3) Where the evidence referred to in subsection 2 is presented to the board after the 1st day of April and before the first school day in September in any year, the board shall make the determination required under subsection 2 and, where the board determines that French-speaking pupils can be assembled in classes or groups of twenty or more for the use of the French language in instruction, the board may, commencing on the first school day in January of the following year, and shall, commencing on the first school day in September of such following year, provide for the use of the French language in instruction in such classes or groups. Idem

(4) Where a board provides or is required to provide for the use of the French language in instruction in one or more classes in a secondary school and in the opinion of the board the number of French-speaking pupils who elect to be taught in the French language so warrants, the board shall provide an appropriate unit of a secondary school or, where practicable, a French-language secondary school. French-language secondary schools

(5) Where a board determines that the number of French-speaking pupils who elect to be taught in the French language is not sufficient to justify the establishment of a French-language secondary school, the board shall, in respect of the education of such pupils, consider the possibility of entering into an agreement with another board under subsection 1 of section 60 of this Act or section 36 of *The Schools Administration Act*. Agreement with another board

R.S.O. 1970,
c. 424

Establish-
ment of
committee

49.—(1) Where,

- (a) ten or more French-speaking ratepayers of a secondary school district apply in writing to the board for the establishment or extension in a secondary school of a class, group or program in which the French language is or is to be used in instruction; or
- (b) a board establishes or extends or decides to establish or extend a class, group or program in which the French language is or is to be used in instruction,

the board shall, within two months of the application, establishment, extension or decision to establish or extend, by resolution, establish a committee and provide for the holding of elections of members thereof, and such elections shall, subject to subsection 6, be held within such period.

Composition

(2) The committee shall consist of nine members and shall be composed of,

- (a) three members of the board appointed by the board; and
- (b) six French-speaking ratepayers who are not members of the board but have the qualifications required for members of the board, elected by French-speaking ratepayers of the secondary school district.

Member of
elementary
board

(3) A member of the committee under clause *b* of subsection 2 may be a member of an elementary school board.

Term of
office

(4) A member of a committee shall hold office during the term of the members of the board and until a new board is organized.

Apportion-
ment of
members

(5) The board, subject to subsection 8, shall apportion the number of members under clause *b* of subsection 2 among the municipalities and the localities as defined in section 27, or among parts or groups of such municipalities or localities, within the jurisdiction of the board as nearly as is practicable in the proportion that the number of French-speaking pupils who elect to be taught in the French language from each such municipality, locality or part or group thereof bears to the total number of such pupils within the area of jurisdiction of the board.

Meetings
of French-
speaking
ratepayers
to elect
committee
members

(6) The board shall make provision for a meeting of its French-speaking ratepayers in respect of each area to which

one or more members are apportioned under subsection 5 for the purpose of electing such member or members to the committee, and shall advertise in each of its schools and in the public media serving the local population, the place, date and time of the meeting, and take such additional action to publicize the meeting as it considers expedient.

(7) Where the election of members of a committee under ^{Idem} subsection 1 would otherwise be held within three months before the date of the regular election of members of the board, the election required under subsection 1 shall be held in accordance with section 50.

(8) For the purposes of the second and subsequent elections of members to a committee, the board shall consult with the committee before making the apportionment referred to in subsection 5 and shall make such apportionment on or before the 1st day of December in the year of a regular election of the board. ^{Consultation with committee re apportionment}

(9) Where a French-language committee has been established by a board before this section comes into force and the members thereof have not been appointed or elected in accordance with this section, the board shall establish a committee in accordance with this section, and elections of members of the committee shall be held before the 31st day of January, 1974, and the French-language committee established before this section comes into force is dissolved as of the date upon which such election is completed. ^{Committee to be established in accordance with this section}

50. Where a committee has been established and a new board has been elected, a meeting provided under subsection 6 of section 49 to elect a member or members to the committee shall be held, on or before the second Wednesday following the first meeting of the newly-elected board, commencing at 8 o'clock in the afternoon on such date and at such place as the board may determine, and such meeting may also consider any other matters brought before it, and the provisions of subsection 6 of section 49 respecting the publicizing of the meeting apply. ^{French-speaking ratepayers to elect subsequent members to committee}

51.—(1) The secretary of the board or a person appointed by the board shall call to order each meeting of French-speaking ratepayers under sections 49 and 50 and shall preside thereat for the purpose of electing a chairman of the meeting. ^{Election of chairman of meeting}

(2) The chairman of a meeting shall appoint a secretary who shall record the proceedings of the meeting and perform such other duties as are required by the chairman. ^{Secretary of meeting}

Procedure at
meeting

(3) The chairman of a meeting shall conduct the election of the member or members of the committee to be elected at such meeting and shall submit all motions to the meeting in the manner desired by the majority, and the chairman is entitled to vote on any motion and, in the case of an equality of votes with respect to the election of a member of the committee, the chairman shall provide for drawing lots to determine which of the candidates is elected and a motion on which there is an equality of votes is deemed to be lost.

Notice of
result of
election

(4) Notice in writing shall be given by the secretary of a meeting to the secretary of the board designating by their names and addresses the person or persons elected as members of the committee.

Chairman
and vice-
chairman of
committee

52.—(1) At the first meeting of the committee, the members shall elect from among themselves a chairman and a vice-chairman.

Quorum

(2) A majority of the members of the committee constitutes a quorum, and the vote of a majority of the members present at a meeting is necessary to bind the committee.

Vote of
chairman,
equality
of votes

(3) On every motion, the chairman may vote, and any motion on which there is an equality of votes shall be deemed to be lost.

Special
meeting

(4) A special meeting of the committee may be called by the chairman of the committee and shall be called by the chairman upon the request in writing of two members of the committee who shall specify the objects for which the meeting is to be held, and the objects shall be stated in the notice calling the meeting.

Vacancies

53. Every vacancy on a committee for any cause shall be filled by appointment by the board in the case of appointed members and by the elected members of the committee in the case of elected members and every person so appointed shall hold office for the unexpired term of the member whose seat has become vacant.

Recommen-
dations

54.—(1) A Committee is responsible for developing proposals designed to meet the educational and cultural needs of the French-speaking pupils and the French-speaking community and for such purpose may make recommendations in respect of,

- (a) the provision of suitable sites, accommodation and equipment;

- (b) the establishment, operation and management of French-language instructional units;
- (c) the use of the French language and of the English language in French-language instructional units;
- (d) the recruitment and appointment of the required teaching, supervisory and administrative personnel;
- (e) the establishment of the courses of study and the use of text books;
- (f) the development and establishment of special education programs;
- (g) the establishment of attendance areas for French-language instructional units;
- (h) the provision of transportation for pupils;
- (i) the entering into agreements with other boards in respect of the provision of instruction in the French language and supervisory and consultative services;
- (j) the provision of board, lodging and transportation for pupils;
- (k) the development and establishment of adult education programs;
- (l) the use of any facility and means necessary to meet the educational and cultural needs of the French-speaking community;
- (m) the provision of summer school programs; and
- (n) any other matter pertaining to French language education for French-speaking pupils.

(2) The committee shall report at each regular meeting of the board. Committee report to board

(3) The board shall seek the advice of the committee on all matters affecting the establishment, program, administration and termination of French-language instructional units before any final decision regarding such matters is taken by the board and shall provide adequate accommodation and staff to implement the decision of the board. Board to seek advice of committee

(4) The board shall consider any recommendation submitted to it in writing by the committee and shall not refuse its approval Consideration of recommendations by board

without having given the committee an opportunity to be heard by the board or by any committee of the board to which such recommendation is referred and, where a board refuses a recommendation of the committee, it shall, within thirty days after receiving the recommendation of the committee, forward to the committee written reasons for its refusal.

Referral by
committee to
Languages of
Instruction
Commission

(5) Upon receipt of a refusal and the reasons therefor under subsection 4, the committee may, by motion, refer the matter to the Languages of Instruction Commission of Ontario, in which case it shall send to the Commission and to the board copies of the motion, the recommendation of the committee and the written reasons of the board for its refusal.

Attendance
of committee
chairman at
board
committee
meeting

55.—(1) The chairman of the committee or a member of the committee designated by him may attend any meeting of a committee of the board and shall be given the opportunity to be heard at such meeting in respect of any matter that affects French-speaking pupils and that is within the jurisdiction of such committee of the board.

Distribution
of adminis-
trative
materials

(2) Notices, agendas and minutes in respect of meetings of the board shall be distributed to the members of the committee together with such supporting documents as may be agreed upon by the board and the committee.

Formation
of sub-
committee

(3) The committee may, at its discretion, form subcommittees to assist it in its work.

Committee
may hold
public
meetings

(4) The committee may hold such public meetings to report upon its work as it considers necessary or desirable.

Resources and
services to
be provided by
board

56.—(1) The board shall make available to the committee the resources and services provided for a committee of the board.

Annual
report of
committee

(2) The chairman of the committee shall cause to be prepared in French and English an annual report, and the report shall be included in that of the board where the board publishes a report.

Services of
professional
staff to be
provided

(3) The committee may, through the chief executive officer of the board, obtain the advice and assistance of such supervisory officers and teachers employed by the board as the committee may request.

Honorarium

57.—(1) Each member of the committee who is not a member of the board shall receive an honorarium in accordance with subsection 1 of section 40 of *The Schools Administration Act*, except that the maximum honorarium shall be based upon the enrolment in French-language instructional units and subsection 7 of the said section 40 applies *mutatis mutandis* to such member.

R.S.O. 1970,
c. 424

(2) The board may authorize a member of the committee to attend on the same basis as a member of the board such conferences and meetings as the board considers necessary or desirable for the effective functioning of the committee, and subsections 5 and 6 of section 40 of *The Schools Administration Act* apply *mutatis mutandis* to a member of the committee.

Attendance
at meetings
and
conferences

R.S.O. 1970,
c. 424

(3) The board shall, on behalf of the members of the committee, pay all or part of a fee required for membership in a provincial association of French-language committees where the committee desires such membership.

Provincial
association
membership
fee

58. Notwithstanding any other provision in this Part, English or Anglais shall be an obligatory subject of instruction for every pupil of grades 9 to 12 who is enrolled in a French-language school and shall be a required subject for a certificate or diploma issued to such a pupil.

English or
Anglais
as subject
required in
grades 9 to 12

58a.—(1) Where a board has provided one or more French-language secondary schools and a number of pupils of the board elect to be taught in the English language, section 48 applies *mutatis mutandis* in respect of provision for the use of the English language in instruction.

English-
language
classes where
French-
language
school or
classes
established

(2) Where the number of English-speaking pupils of a board is fewer than the number of pupils of the board for whom French is the language of instruction and,

Establish-
ment of
English-
language
advisory
committee

(a) ten or more English-speaking ratepayers of the secondary school district apply in writing to the board for the establishment or extension in a secondary school of a class, group or program in which the English language is or is to be used in instruction; or

(b) the board establishes or extends or decides to establish or extend a class, group or program in which the English language is or is to be used in instruction,

the board shall establish an English-language advisory committee, and the provisions of this Part that apply to a committee in respect of the French-speaking ratepayers, pupils and community and in respect of French-language instructional units apply *mutatis mutandis* to an English-language advisory committee in respect of the English-speaking ratepayers, pupils and community and in respect of schools or classes in which English is the language of instruction.

58b.—(1) A board, on the request of an English-speaking pupil of the board or, where the pupil is a minor, of his parent or guardian, may admit the pupil to a French-language

Admission
of pupils
other than
French-
speaking
pupils

instructional unit if his admission is approved by a majority vote of an admissions committee appointed by the board and composed of the principal of the school in which the French-language instructional unit is operated, a French-language teacher of such school and, subject to subsection 2, a French-speaking supervisory officer employed by the board.

Where board
has no
French-
speaking
supervisory
officer

(2) Where the board does not employ a French-speaking supervisory officer, it shall arrange for a French-speaking supervisory officer employed by another board or by the Minister to serve as a member of the admissions committee.

s. 77 (6) (d),
re-enacted

6. Clause *d* of subsection 6 of section 77 of the said Act is repealed and the following substituted therefor:

(*d*) where all or part of the municipality in which the school is located is in a separate school zone, a supervisory officer designated by the separate school board having jurisdiction in such zone and, where such zone is in a provincial separate school superintendency, an area superintendent designated by the Minister.

Commence-
ment

7. This Act comes into force on the day it receives Royal Assent.

Short title

8. This Act may be cited as *The Secondary Schools and Boards of Education Amendment Act, 1973*.

SECTION 6. The amendment makes it clear that the admissions board of a school for trainable retarded children includes a separate school supervisory officer only when there is a separate school zone in the municipality in which the school is located.

An Act to amend The Secondary Schools
and Boards of Education Act

1st Reading

June 22nd, 1973

2nd Reading

October 2nd, 1973

3rd Reading

THE HON. T. L. WELLS
Minister of Education

*(Reprinted as amended by the
Committee of the Whole House)*

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3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

**An Act to amend
The Secondary Schools and Boards of Education Act**

THE HON. T. L. WELLS
Minister of Education



TORONTO

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**An Act to amend
The Secondary Schools and
Boards of Education Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Secondary Schools and Boards of Education Act*, being ^{s. 28a, enacted} chapter 425 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section:

28a.—(1) Where the boundaries of a school division are altered, all lands and premises that, Alteration of boundaries: disposition of assets and liabilities

- (a) are situate in an area that is added to a school division, school section or secondary school district by such alteration;
- (b) are used as schools on the last school day preceding the effective date of such alteration; and
- (c) immediately prior to the effective date of such alteration are vested in another board of education, public school board or secondary school board except a public school board appointed under section 12 of *The Public Schools Act* and a board appointed or R.S.O. 1970, c. 385 formed under section 4 of this Act,

shall, on and after such effective date, be vested without compensation, subject to all existing debts, contracts, agreements and liabilities that pertain to such lands and premises, in the board of the school division, school section or secondary school district to which such area is added, and the boards concerned shall agree upon the disposition of all other property situate upon, or used in connection with, such lands and premises.

Dispute

(2) Any dispute as to the disposition of property under subsection 1 may be referred by one or more of the boards concerned to the Ontario Municipal Board, which shall determine the matters in dispute, and its decision is final.

Employment contracts

(3) The employment contract of every employee of a board who, immediately before the effective date of the alteration of the boundaries of a school division, was required to perform his duties in a school that is vested under subsection 1 in the board of a school division, school section or secondary school district becomes an obligation of the board in which the school is vested.

Representation of municipalities detached and added to another school division

(4) Subject to subsection 8, where one or more municipalities are detached from a school division and attached to an adjoining school division and a member of the board of the school division from which the municipality or municipalities are detached resides in one such municipality and was elected by public school electors to represent such municipality, whether or not the municipality was combined with one or more other municipalities for election purposes, such member shall, on the effective date of the attaching of the municipality or municipalities, cease to be a member of the board to which he was elected and shall on such date and for the remainder of his term of office be deemed,

- (a) to have been elected by public school electors to the board of the school division to which the municipality in which he resides is attached; and
- (b) to represent on such board the municipality in which he resides and the other municipality or municipalities, if any, that were combined therewith for election purposes under subsection 9 of section 38 at the time of his election and that are also attached to such school division,

and for such period the municipality or combined municipalities so attached shall be deemed to have been determined under subsection 9 of section 38 as a municipality or municipalities to be represented by one member to be elected by the public school electors.

Where board reduced by transfer of area

(5) Where one or more municipalities are detached from a school division and the number of members of the board of such school division elected by public school electors is reduced pursuant to subsection 4, for the remainder of the term of the board the number of members who remain on the board and who were elected by public school electors and the total number of members who remain on the board shall be deemed to be the number of members to be elected by public

school electors under subsection 4 of section 38 and the total number of members determined under subsection 2 of section 38 respectively.

(6) Subject to subsection 8, where a municipality or part thereof is detached from a school division and attached to an adjoining school division, school section or secondary school district, on the effective date thereof and for the remainder of the term of office of the board of the enlarged school division, school section or secondary school district, the public school electors of such municipality or part shall be represented thereon by the member or members last elected thereto by the public school electors of the municipality, combination of municipalities or ward that adjoins the attached municipality or part and, where there are two or more such organized municipalities, combinations of municipalities or wards, the members of the board elected by public school electors shall, by resolution, determine which member or members shall represent the public school electors in the attached municipality or part for the remainder of the term of office of the board, but this subsection does not apply to the municipality or municipalities that will be represented by a member by virtue of subsection 4.

Representation of public school electors of municipality attached to school division

(7) Subject to subsection 8, where one or more municipalities or part or parts thereof are detached from a school division and attached to an adjoining school division or secondary school district, on the effective date thereof and for the remainder of the term of office of the board of the enlarged school division or secondary school district, the separate school supporters in each such municipality or part shall be represented thereon by the member or members last elected thereto by the separate school electors in the area that adjoins such attached municipality and for which one or more members are elected to represent separate school supporters.

Representation of separate school supporters of municipality attached to school division

(8) Subsections 4, 6 and 7 do not apply where a regular election of the board is to be held in the year preceding the effective date on which the municipality, municipalities or part or parts thereof are attached to the adjoining school division, school section or secondary school district, as the case may be.

Where subss. 4, 6 and 7 do not apply

2. Subsection 12 of section 32 of the said Act is amended by striking out "following year" in the seventh and eighth lines and inserting in lieu thereof "year following the year in which a final decision is received by the board except that, where such decision is received by the board in January, the adjustment shall be made in the levy for the year in which the decision is received".

s. 32 (12), amended

s. 38 (7) (a),
amended

3.—(1) Clause *a* of subsection 7 of section 38 of the said Act is amended by striking out “under subsection 1 of section 45” in the fifth line.

s. 38 (10) (c),
amended

(2) Clause *c* of subsection 10 of the said section 38 is amended by striking out “under subsection 2 of section 28” in the second line.

s. 43,
amended

4.—(1) Section 43 of the said Act is amended by adding thereto the following subsection:

Right of
certain pupils
to attend
school in
another
school
division

(1a) Where, on the 31st day of December, 1973, a pupil is enrolled in a public or secondary school that he has a right to attend and the school, on and after the 1st day of January, 1974, is situated in a school division other than the school division in which the pupil resides, the pupil has, in addition to any right that he may have under *The Ministry of Education Act*, *The Public Schools Act*, *The Schools Administration Act* or this Act, subject to subsection 5 of section 63, the right to attend the school until he completes his education in the school, and the divisional boards concerned may enter into an agreement in respect of the transportation to and from school of such pupils.

R.S.O. 1970,
cc. 111, 385,
424

s. 43 (3),
amended

(2) Subsection 3 of the said section 43 is amended by striking out “1” in the first line and inserting in lieu thereof “1, 1a”.

Part V,
re-enacted

5. Part V of the said Act is repealed and the following substituted therefor:

PART V

FRENCH-LANGUAGE SECONDARY SCHOOLS

Interpre-
tation

47. In this Part,

- (a) “board” means a board of education;
- (b) “committee” means a French-language advisory committee formed under this Part;
- (c) “French-language instructional unit” means a class, group of classes, or school in which French is the language of instruction;
- (d) “ratepayer” in respect of a board means a person entitled to vote at an election of members of the board.

French-
language
schools
or classes

48.—(1) A board may establish and maintain secondary schools or classes in secondary schools for the purpose of

providing for the use of the French language in instruction, or may enter into an agreement with another board to provide for the admission of resident pupils of the first-mentioned board to one or more French-language instructional units operated by such other board.

(2) Where, after the first school day in September and on or before the 1st day of April in any year, written evidence is presented to a board that a number of French-speaking pupils resident in the secondary school district have elected to be taught in the French language, the board shall forthwith determine whether French-speaking pupils can be assembled for this purpose in one or more classes or groups of twenty or more and, where the board determines that such pupils can be so assembled, it shall provide for the use of the French language in instruction in such classes or groups commencing on the first school day in the following school year. French-language schools

(3) Where the evidence referred to in subsection 2 is presented to the board after the 1st day of April and before the first school day in September in any year, the board shall make the determination required under subsection 2 and, where the board determines that French-speaking pupils can be assembled in classes or groups of twenty or more for the use of the French language in instruction, the board may, commencing on the first school day in January of the following year, and shall, commencing on the first school day in September of such following year, provide for the use of the French language in instruction in such classes or groups. Idem

(4) Where a board provides or is required to provide for the use of the French language in instruction in one or more classes in a secondary school and in the opinion of the board the number of French-speaking pupils who elect to be taught in the French language so warrants, the board shall provide an appropriate unit of a secondary school or, where practicable, a French-language secondary school. French-language secondary schools

(5) Where a board determines that the number of French-speaking pupils who elect to be taught in the French language is not sufficient to justify the establishment of a French-language secondary school, the board shall, in respect of the education of such pupils, consider the possibility of entering into an agreement with another board under subsection 1 of section 60 of this Act or section 36 of *The Schools Administration Act*. Agreement with another board
R.S.O. 1970, c. 424

Establish-
ment of
committee

49.—(1) Where,

- (a) ten or more French-speaking ratepayers of a secondary school district apply in writing to the board for the establishment or extension in a secondary school of a class, group or program in which the French language is or is to be used in instruction; or
- (b) a board establishes or extends or decides to establish or extend a class, group or program in which the French language is or is to be used in instruction,

the board shall, within two months of the application, establishment, extension or decision to establish or extend, by resolution, establish a committee and provide for the holding of elections of members thereof, and such elections shall, subject to subsection 6, be held within such period.

Composition

(2) The committee shall consist of nine members and shall be composed of,

- (a) three members of the board appointed by the board; and
- (b) six French-speaking ratepayers who are not members of the board but have the qualifications required for members of the board, elected by French-speaking ratepayers of the secondary school district.

Member of
elementary
board

(3) A member of the committee under clause *b* of subsection 2 may be a member of an elementary school board.

Term of
office

(4) A member of a committee shall hold office during the term of the members of the board and until a new board is organized.

Apportion-
ment of
members

(5) The board, subject to subsection 8, shall apportion the number of members under clause *b* of subsection 2 among the municipalities and the localities as defined in section 27, or among parts or groups of such municipalities or localities, within the jurisdiction of the board as nearly as is practicable in the proportion that the number of French-speaking pupils who elect to be taught in the French language from each such municipality, locality or part or group thereof bears to the total number of such pupils within the area of jurisdiction of the board.

Meetings
of French-
speaking
ratepayers
to elect
committee
members

(6) The board shall make provision for a meeting of its French-speaking ratepayers in respect of each area to which

one or more members are apportioned under subsection 5 for the purpose of electing such member or members to the committee, and shall advertise in each of its schools and in the public media serving the local population, the place, date and time of the meeting, and take such additional action to publicize the meeting as it considers expedient.

(7) Where the election of members of a committee under subsection 1 would otherwise be held within three months before the date of the regular election of members of the board, the election required under subsection 1 shall be held in accordance with section 50.

(8) For the purposes of the second and subsequent elections of members to a committee, the board shall consult with the committee before making the apportionment referred to in subsection 5 and shall make such apportionment on or before the 1st day of December in the year of a regular election of the board.

(9) Where a French-language committee has been established by a board before this section comes into force and the members thereof have not been appointed or elected in accordance with this section, the board shall establish a committee in accordance with this section, and elections of members of the committee shall be held before the 31st day of January, 1974, and the French-language committee established before this section comes into force is dissolved as of the date upon which such election is completed.

50. Where a committee has been established and a new board has been elected, a meeting provided under subsection 6 of section 49 to elect a member or members to the committee shall be held, on or before the second Wednesday following the first meeting of the newly-elected board, commencing at 8 o'clock in the afternoon on such date and at such place as the board may determine, and such meeting may also consider any other matters brought before it, and the provisions of subsection 6 of section 49 respecting the publicizing of the meeting apply.

51.—(1) The secretary of the board or a person appointed by the board shall call to order each meeting of French-speaking ratepayers under sections 49 and 50 and shall preside thereat for the purpose of electing a chairman of the meeting.

(2) The chairman of a meeting shall appoint a secretary who shall record the proceedings of the meeting and perform such other duties as are required by the chairman.

Procedure at
meeting

(3) The chairman of a meeting shall conduct the election of the member or members of the committee to be elected at such meeting and shall submit all motions to the meeting in the manner desired by the majority, and the chairman is entitled to vote on any motion and, in the case of an equality of votes with respect to the election of a member of the committee, the chairman shall provide for drawing lots to determine which of the candidates is elected and a motion on which there is an equality of votes is deemed to be lost.

Notice of
result of
election

(4) Notice in writing shall be given by the secretary of a meeting to the secretary of the board designating by their names and addresses the person or persons elected as members of the committee.

Chairman
and vice-
chairman of
committee

52.—(1) At the first meeting of the committee, the members shall elect from among themselves a chairman and a vice-chairman.

Quorum

(2) A majority of the members of the committee constitutes a quorum, and the vote of a majority of the members present at a meeting is necessary to bind the committee.

Vote of
chairman,
equality
of votes

(3) On every motion, the chairman may vote, and any motion on which there is an equality of votes shall be deemed to be lost.

Special
meeting

(4) A special meeting of the committee may be called by the chairman of the committee and shall be called by the chairman upon the request in writing of two members of the committee who shall specify the objects for which the meeting is to be held, and the objects shall be stated in the notice calling the meeting.

Vacancies

53. Every vacancy on a committee for any cause shall be filled by appointment by the board in the case of appointed members and by the elected members of the committee in the case of elected members and every person so appointed shall hold office for the unexpired term of the member whose seat has become vacant.

Recommen-
dations

54.—(1) A Committee is responsible for developing proposals designed to meet the educational and cultural needs of the French-speaking pupils and the French-speaking community and for such purpose may make recommendations in respect of,

- (a) the provision of suitable sites, accommodation and equipment;

- (b) the establishment, operation and management of French-language instructional units;
- (c) the use of the French language and of the English language in French-language instructional units;
- (d) the recruitment and appointment of the required teaching, supervisory and administrative personnel;
- (e) the establishment of the courses of study and the use of text books;
- (f) the development and establishment of special education programs;
- (g) the establishment of attendance areas for French-language instructional units;
- (h) the provision of transportation for pupils;
- (i) the entering into agreements with other boards in respect of the provision of instruction in the French language and supervisory and consultative services;
- (j) the provision of board, lodging and transportation for pupils;
- (k) the development and establishment of adult education programs;
- (l) the use of any facility and means necessary to meet the educational and cultural needs of the French-speaking community;
- (m) the provision of summer school programs; and
- (n) any other matter pertaining to French language education for French-speaking pupils.

(2) The committee shall report at each regular meeting of the board. Committee report to board

(3) The board shall seek the advice of the committee on all matters affecting the establishment, program, administration and termination of French-language instructional units before any final decision regarding such matters is taken by the board and shall provide adequate accommodation and staff to implement the decision of the board. Board to seek advice of committee

(4) The board shall consider any recommendation submitted to it in writing by the committee and shall not refuse its approval Consideration of recommendations by board

without having given the committee an opportunity to be heard by the board or by any committee of the board to which such recommendation is referred and, where a board refuses a recommendation of the committee, it shall, within thirty days after receiving the recommendation of the committee, forward to the committee written reasons for its refusal.

Referral by
committee to
Languages of
Instruction
Commission

(5) Upon receipt of a refusal and the reasons therefor under subsection 4, the committee may, by motion, refer the matter to the Languages of Instruction Commission of Ontario, in which case it shall send to the Commission and to the board copies of the motion, the recommendation of the committee and the written reasons of the board for its refusal.

Attendance
of committee
chairman at
board
committee
meeting

55.—(1) The chairman of the committee or a member of the committee designated by him may attend any meeting of a committee of the board and shall be given the opportunity to be heard at such meeting in respect of any matter that affects French-speaking pupils and that is within the jurisdiction of such committee of the board.

Distribution
of adminis-
trative
materials

(2) Notices, agendas and minutes in respect of meetings of the board shall be distributed to the members of the committee together with such supporting documents as may be agreed upon by the board and the committee.

Formation
of sub-
committee

(3) The committee may, at its discretion, form subcommittees to assist it in its work.

Committee
may hold
public
meetings

(4) The committee may hold such public meetings to report upon its work as it considers necessary or desirable.

Resources and
services to
be provided by
board

56.—(1) The board shall make available to the committee the resources and services provided for a committee of the board.

Annual
report of
committee

(2) The chairman of the committee shall cause to be prepared in French and English an annual report, and the report shall be included in that of the board where the board publishes a report.

Services of
professional
staff to be
provided

(3) The committee may, through the chief executive officer of the board, obtain the advice and assistance of such supervisory officers and teachers employed by the board as the committee may request.

Honorarium

57.—(1) Each member of the committee who is not a member of the board shall receive an honorarium in accordance with subsection 1 of section 40 of *The Schools Administration Act*, except that the maximum honorarium shall be based upon the enrolment in French-language instructional units and subsection 7 of the said section 40 applies *mutatis mutandis* to such member.

R.S.O. 1970,
c. 424

(2) The board may authorize a member of the committee to attend on the same basis as a member of the board such conferences and meetings as the board considers necessary or desirable for the effective functioning of the committee, and subsections 5 and 6 of section 40 of *The Schools Administration Act* apply *mutatis mutandis* to a member of the committee.

Attendance
at meetings
and
conferences

R.S.O. 1970,
c. 424

(3) The board shall, on behalf of the members of the committee, pay all or part of a fee required for membership in a provincial association of French-language committees where the committee desires such membership.

Provincial
association
membership
fee

58. Notwithstanding any other provision in this Part English or Anglais shall be an obligatory subject of instruction for every pupil of grades 9 to 12 who is enrolled in a French-language school and shall be a required subject for a certificate or diploma issued to such a pupil.

English or
Anglais
as subject
required in
grades 9 to 12

58a.—(1) Where a board has provided one or more French-language secondary schools and a number of pupils of the board elect to be taught in the English language, section 48 applies *mutatis mutandis* in respect of provision for the use of the English language in instruction.

English-
language
classes where
French-
language
school or
classes
established

(2) Where the number of English-speaking pupils of a board is fewer than the number of pupils of the board for whom French is the language of instruction and,

Establish-
ment of
English-
language
advisory
committee

(a) ten or more English-speaking ratepayers of the secondary school district apply in writing to the board for the establishment or extension in a secondary school of a class, group or program in which the English language is or is to be used in instruction; or

(b) the board establishes or extends or decides to establish or extend a class, group or program in which the English language is or is to be used in instruction,

the board shall establish an English-language advisory committee, and the provisions of this Part that apply to a committee in respect of the French-speaking ratepayers, pupils and community and in respect of French-language instructional units apply *mutatis mutandis* to an English-language advisory committee in respect of the English-speaking ratepayers, pupils and community and in respect of schools or classes in which English is the language of instruction.

58b.—(1) A board, on the request of an English-speaking pupil of the board or, where the pupil is a minor, of his parent or guardian, may admit the pupil to a French-language

Admission
of pupils
other than
French-
speaking
pupils

instructional unit if his admission is approved by a majority vote of an admissions committee appointed by the board and composed of the principal of the school in which the French-language instructional unit is operated, a French-language teacher of such school and, subject to subsection 2, a French-speaking supervisory officer employed by the board.

Where board
has no
French-
speaking
supervisory
officer

(2) Where the board does not employ a French-speaking supervisory officer, it shall arrange for a French-speaking supervisory officer employed by another board or by the Minister to serve as a member of the admissions committee.

s. 77 (6) (d),
re-enacted

6. Clause *d* of subsection 6 of section 77 of the said Act is repealed and the following substituted therefor:

(*d*) where all or part of the municipality in which the school is located is in a separate school zone, a supervisory officer designated by the separate school board having jurisdiction in such zone and, where such zone is in a provincial separate school superintendency, an area superintendent designated by the Minister.

Commence-
ment

7. This Act comes into force on the day it receives Royal Assent.

Short title

8. This Act may be cited as *The Secondary Schools and Boards of Education Amendment Act, 1973*.

An Act to amend The Secondary Schools
and Boards of Education Act

1st Reading

June 22nd, 1973

2nd Reading

October 2nd, 1973

3rd Reading

October 11th, 1973

THE HON. T. L. WELLS
Minister of Education

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BILL 181

Government
Publications

Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act to amend The Schools Administration Act

THE HON. T. L. WELLS
Minister of Education



TORONTO

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EXPLANATORY NOTES

SECTION 1.—Subsection 1. The definition of occasional teacher is revised for clarification.

Subsection 2. The definition of permanent improvement is amended to include the obtaining of an electrical power supply.

Subsection 3. A definition of school day is provided.

Subsection 4. The amendment is to make it clear that the meaning of school site includes an interest in land.

An Act to amend The Schools Administration Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Paragraph 16 of subsection 2 of section 1 of *The Schools Administration Act*, being chapter 424 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor:

16. “occasional teacher” means a teacher employed to teach as a substitute for a permanent, probationary or temporary teacher who has died during the school year or who is absent from his regular duties for a temporary period that is less than a school year and that does not extend beyond the end of a school year.

- (2) Subparagraph vi of paragraph 18 of subsection 2 of the said section 1 is repealed and the following substituted therefor:

vi. the obtaining of a water supply or an electrical power supply on the school property or the conveying of a water supply or an electrical power supply to the school from outside the school property.

- (3) Subsection 2 of the said section 1, as amended by the Statutes of Ontario, 1971, chapter 90, section 1, 1972, chapter 1, section 62, and 1972, chapter 77, section 1, is further amended by adding thereto the following paragraph:

26a. “school day” means a day that is within a school year and is not a school holiday.

- (4) Paragraph 29 of subsection 2 of the said section 1 is amended by inserting after “land” in the first line “or interest therein”.

s. 1 (2),
amended

- (5) Subsection 2 of the said section 1 is further amended by adding thereto the following paragraph:

29a. "school year" means the period prescribed as such by, or approved as such under, the regulations.

s. 3,
repealed

2. Section 3 of the said Act is repealed.

s. 4 (1),
re-enacted

3. Subsection 1 of section 4 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 77, section 2, is repealed and the following substituted therefor:

Closing of
school or
class by
board

(1) A board may close or authorize the closing of a school or class for a temporary period where such closing appears unavoidable because of,

(a) failure of transportation arrangements; or

(b) inclement weather, fire, flood, the breakdown of the school heating plant, or a similar emergency.

s. 5,
repealed

4. Section 5 of the said Act is repealed.

s. 6,
amended

5. Section 6 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 77, section 3, is further amended by adding thereto the following subsection:

Where school
year varied

(2a) Where a school year approved by the Minister does not commence on the day following Labour Day, references to the first school day in September and the last school day in June in subsections 1 and 2 shall be read as the first school day in the school year and the last school day in the school year respectively for the purpose of compulsory attendance of pupils of the school or schools or parts thereof to which the school year applies.

s. 12 (1) (a),
re-enacted

6. Clause *a* of subsection 1 of section 12 of the said Act is repealed and the following substituted therefor:

(a) report to the appropriate school attendance counsellor and supervisory officer the names, ages and residences of all pupils of compulsory school age who have not attended school as required.

s. 16 (3),
re-enacted

7. Subsection 3 of section 16 of the said Act is repealed and the following substituted therefor:

Salary of
teacher

(3) Unless otherwise expressly agreed, a teacher is entitled to be paid his salary in the proportion that the number of school days for which he is employed in the school year bears to the total number of school days in the school year.

Subsection 5. A definition of school year is provided.

SECTION 2.—The provisions prescribing the school year are to be transferred to the regulations made under *The Ministry of Education Act*.

SECTION 3.—The amendment permits a board to close a school or class for a temporary period in certain emergencies.

SECTION 4.—Provision for a variation of the school year is to be transferred to the regulations made under *The Ministry of Education Act*.

SECTION 5.—The new subsection relates compulsory attendance dates to the first and last days of the school year where the Minister has approved a variation in the school year as provided in the regulations to be made under *The Ministry of Education Act*.

SECTION 6.—The provision is revised to delete an obsolete reference to regulations relating to principals' reports and to require the principal of a secondary school as well as of an elementary school to report to the supervisory officer.

SECTION 7.—The subsection is re-enacted to make reference to school days rather than teaching days.

SECTION 8.—Subsection 1. The amendment updates the jurisdiction under which educational conferences for teachers are organized and requires teachers to participate in programs that are established for the days in the school year that are not instructional days for all pupils.

Subsection 2. The clause is re-enacted to require the principal to conduct the school in accordance with a school calendar and to make the school calendar available where the board varies the school year.

Subsection 3. The amendment deletes reference to the school term and requires a principal to hold such examinations as he may require and to report a pupil's progress as required by the board.

SECTION 9. The amendment is to provide that where a request is refused by a principal it shall be considered by the supervisory officer before being referred to a person designated by the Minister for a hearing and to specify who are parties at the hearing.

SECTION 10.—Subsection 1. Complementary to amendments allowing for variation in the school term.

8.—(1) Clause *h* of subsection 1 of section 21 of the said Act is ^{s. 21 (1) (*h*),} repealed and the following substituted therefor:

(*h*) to attend the educational conference that is approved ^{educational} by the appropriate supervisory officer under the ^{conferences} regulations;

(*ha*) to participate in professional activity days as deter- ^{professional} mined by the board under the regulations. ^{activity days}

(2) Clause *d* of subsection 2 of the said section 21 is repealed ^{s. 21 (2) (*d*),} and the following substituted therefor: ^{re-enacted}

(*d*) to prepare a timetable, to conduct the school ^{timetable} according to such timetable and the school calendar or calendars applicable thereto and to make the calendar or calendars and the timetable accessible to the pupils, teachers and supervisory officers.

(3) Clause *e* of subsection 2 of the said section 21 is repealed ^{s. 21 (2) (*e*),} and the following substituted therefor: ^{re-enacted}

(*e*) to hold, subject to the approval of the appropriate ^{examinations} supervisory officer, such examinations as he considers ^{and reports} necessary for the promotion of pupils or for any other purpose and report as required by the board the progress of the pupil to his parent or guardian where the pupil is a minor and otherwise to the pupil.

9. Subsection 5 of section 21*a* of the said Act, as enacted by ^{s. 21*a* (5),} the Statutes of Ontario, 1972, chapter 77, section 14, is repealed ^{re-enacted} and the following substituted therefor:

(5) Where the principal refuses to comply with a request ^{Reference} under subsection 4, the pupil, parent or guardian who made ^{where dis-} the request may, in writing, require the principal to refer the ^{agreement} request to the appropriate supervisory officer who shall either require the principal to comply with the request or submit the record and the request to a person designated by the Minister, and such person shall hold a hearing at which the principal and the person who made the request are the parties to the proceedings, and the person so designated shall, after the hearing, decide the matter, and his decision is final and binding upon the parties to the proceedings.

10.—(1) Paragraph 8 of section 34 of the said Act is amended by ^{s. 34,} striking out "term" in the second line and inserting in lieu ^{par. 8,} thereof "year". ^{amended}

s. 34,
par. 9,
amended

- (2) Paragraph 9 of the said section 34 is amended by striking out "term" in the second line and inserting in lieu thereof "year".

s. 34,
par. 18,
amended

- (3) Paragraph 18 of the said section 34, as re-enacted by the Statutes of Ontario, 1971, chapter 90, section 5, is amended by inserting after "municipality" in the tenth line and in the eleventh line "or board".

s. 34,
amended

- (4) The said section 34 is amended by adding thereto the following paragraph:

borrowing
from funds

19. notwithstanding any other Act, borrow, for any purpose for which the board has authority to spend money, any moneys in any fund established by the board that are not immediately required by the board for the purposes of such fund, but such borrowing shall not extend beyond the term of office of the members of the board and, where secondary school moneys are borrowed for public school purposes or public school moneys are borrowed for secondary school purposes, the board shall pay interest to the fund from which such moneys are borrowed at a rate not less than that being earned by the fund at the date of borrowing.

s. 34,
par. 40,
amended

- (5) Paragraph 40 of the said section 34 is amended by striking out "and specify when such leave shall be taken" in the second and third lines.

s. 37,
amended

- 11.** Section 37 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 90, section 6 and 1972, chapter 77, section 21, is further amended by adding thereto the following subsection:

Cost of
special
services

(2a) A board shall not enter into an agreement under subsection 1 or 2 that requires the board to provide special services for Indian pupils that it does not provide for its resident pupils unless, in addition to the fees prescribed in subsection 1 or 2, the cost of such services is payable by the Crown in right of Canada.

s. 39,
re-enacted

- 12.** Section 39 of the said Act is repealed and the following substituted therefor:

French-
language
elementary
schools and
classes

39.—(1) A board of education, public school board or separate school board may establish and maintain elementary schools or classes in elementary schools, including kindergarten classes, for the purpose of providing for the use of the French language in instruction of French-speaking pupils.

French-
language
classes

(2) Where, after the first school day in September and on or before the 1st day of April in any year, written evidence is

Subsection 2. Complementary to amendments allowing for variation in the school term.

Subsection 3. The amendment permits a board to lend money to another board as well as to a municipality.

Subsection 4. The amendment provides under certain specified conditions for the temporary use by a board of moneys held in funds established by it.

Subsection 5. The provisions respecting maternity leave are amended to render the provision consistent with the provisions of Part II-A of *The Employment Standards Act*.

SECTION 11. The amendment provides that a board may not enter into an agreement to provide special services for Indian pupils that are not made available by a board to its own resident pupils unless the cost therefor is payable by the Government of Canada.

SECTION 12. The provisions respecting French-language and English-language elementary schools and classes are re-enacted to require decisions to be made within the time limits provided and to reduce the minimum size of the groups of pupils necessary to establish classes. Provision is also made for the establishment of admissions committees to admit to French-speaking classes pupils who would not normally be included as French-speaking pupils. Section 39a provides for the advisory committee established in relation to the secondary schools of a board of education to assume similar responsibilities for public school classes.

presented to a board referred to in subsection 1 that a number of French-speaking pupils resident in the school section or separate school zone have elected to be taught in the French language, the board shall forthwith determine whether French-speaking pupils can be assembled for this purpose in one or more classes or groups of twenty-five or more and, where the board determines that such pupils can be so assembled, it shall provide for the use of the French language in instruction in such classes or groups commencing on the first school day of the following year.

(3) Where the evidence referred to in subsection 2 is ^{Idem} presented to the board after the 1st day of April and before the first school day in September in any year, the board shall make the determination required under subsection 2 and, where the board determines that French-speaking pupils can be assembled in classes or groups of twenty-five or more for the use of the French language in instruction, the board may, commencing on the first school day in January of the following year, and shall, commencing on the first school day in September of such following year, provide for the use of the French language in instruction in such classes or groups.

(4) Where a board referred to in subsection 1 provides or ^{French-language schools} is required to provide for the use of the French language in instruction and in the opinion of the board the number of pupils who elect to be taught in the French language so warrants, the board shall provide a French-language elementary school.

(5) Notwithstanding subsections 1, 2, 3 and 4, English may ^{English as subject of instruction} be a subject of instruction in any grade and shall be a subject of instruction in Grade 5 and all subsequent grades in an elementary school.

(6) A board, on the request of the parent or guardian of an ^{Admission of pupils other than French-speaking pupils} English-speaking pupil of the board, or of the pupil where he is an adult, may admit the pupil to a class formed under subsection 1, 2 or 3 or to a school provided under subsection 4 if his admission is approved by majority vote of an admissions committee appointed by the board, and composed of the principal of the school to which admission is requested, a teacher who uses the French language in instruction in such school and, subject to subsection 7, a French-speaking supervisory officer employed by the board.

(7) Where a board does not employ a French-speaking ^{Where board has no French-speaking supervisory officer} supervisory officer, it shall arrange for a French-speaking supervisory officer employed by another board or by the Minister to serve as a member of the admissions committee.

English
language
schools or
classes

(8) Where a board has provided one or more French language elementary schools under subsection 4 and a number of pupils of the board elect to be taught in the English language, subsections 1, 2 and 3 apply *mutatis mutandis* in respect of provision for the use of the English language in instruction.

Duties and
responsi-
bilities of
advisory
committee
in public
schools
R.S.O. 1970,
c. 425

39a. Where, under Part V of *The Secondary Schools and Boards of Education Act*, a board of education has established a French-language advisory committee or an English-language advisory committee, the committee has the same duties and responsibilities in respect of the French-language schools and classes or English-language schools and classes, as the case may be, that are provided in the public schools operated by the board of education as it has in respect of French-language instructional units or English-language schools and classes, as the case may be, for secondary school purposes.

s. 46,
amended

- 13.** Section 46 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 77, section 24, is amended by adding thereto the following subsection:

Participation
of retired
person in
contract

(3) A board may retain a person who retires from employment with the board before he attains the age of sixty-five years in a group established for the purposes of a contract referred to in clause *a* of subsection 1 until he attains such age if he pays the full premium required to be paid to retain his participation in the contract.

s. 58,
re-enacted

- 14.** Section 58 of the said Act is repealed and the following substituted therefor:

Action for
declaration
that seat
vacant

58.—(1) Any person entitled to vote at the election of members of a board may commence an action by writ in the county or district court in the county or district in which the head office of the board is situate for a declaration that the office of a member of such board has become vacant under section 39 of *The Secondary Schools and Boards of Education Act*, section 91 of *The Separate Schools Act* or section 49, 50 or 57 of this Act.

R.S.O. 1970,
c. 430

Time for
bringing
action

(2) No action shall be commenced under this section more than ninety days after the facts alleged to cause the vacancy in the board came to the knowledge of the person bringing such action.

Power of
court

(3) Where in an action under this section the court finds that the office of a member of the board has become vacant, the court may order that the member be removed from office and declare that the office is vacant.

SECTION 13. The amendment will permit a board to include an employee who retires before he is sixty-five years of age in its insurance plan for group life, group accident and hospital, medical, surgical, nursing or dental services until he reaches such age.

SECTION 14. The section, as re-enacted, makes the procedures to vacate the seat of a member of a school board consistent with those procedures to vacate the seat of a member of a municipal council.

SECTION 15. This section is no longer operative since the years of election of trustees and their terms of office are provided under *The Municipal Elections Act, 1972*.

SECTION 16. The amendments are for clarification and to permit a board to lease a site from any owner of land for the purpose of building a school provided the approval of the Minister is obtained.

SECTION 17.—The subsection, as re-enacted, provides that a board may borrow from any source provided that the interest and other charges do not exceed the amounts that would be charged by the majority of chartered banks.

SECTION 18.—As a result of the recommendations of the Ministerial Commission on French-Language Education, a new Part IX-A is enacted to establish the Languages of Instruction Commission of Ontario which will be responsible to the Minister. The Commission will consider matters referred to it by the Minister and by school boards or French-language or English-language advisory committees and make recommendations to the board. Provision is made for the appointment of mediators to inquire into matters of disagreement and endeavour to effect agreements that are conducive to meeting the educational and cultural needs of the French-speaking or English-speaking community.

(4) The provisions of sections 105 to 108 and 112 of *The Municipal Elections Act, 1972* apply *mutatis mutandis* to an action brought under this section. Application of 1972, c. 95

(5) A claim in an action under this section may be joined with a claim in an action under section 104 of *The Municipal Elections Act, 1972*, and such claims may be heard and disposed of in the same action. Joining of claims

15. Section 60 of the said Act is repealed.

s. 60,
repealed

16. Subsections 3 and 4 of section 61 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 77, section 27, are repealed and the following substituted therefor: s. 61 (3, 4),
re-enacted

(3) Subject to section 63, a board may erect buildings for its purposes on land owned by the board. Buildings on land owned by board

(4) A board may erect a school building on land that is leased by the board where the term of the lease, the school site and the plans of the school building are approved by the Minister. Buildings on leased land

17. Subsection 1 of section 71 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 90, section 9 and 1972, chapter 77, section 31, is repealed and the following substituted therefor: s. 71 (1),
re-enacted

(1) Notwithstanding the provisions of any general or special Act, a board may by resolution authorize the treasurer and the chairman or vice-chairman to borrow from time to time by way of a promissory note, such sums as the board considers necessary to meet the current expenditures of the board until the current revenue has been received, provided that the interest and any other charges connected therewith do not exceed the interest that would be payable at the minimum lending rate of the majority of chartered banks on the date of borrowing. Current borrowing

18. The said Act is amended by adding thereto the following Part: Part IX-A,
enacted

PART IX-A

LANGUAGES OF INSTRUCTION COMMISSION OF ONTARIO

88a. In this Part,

Interpre-
tation

(a) "Commission" means the Languages of Instruction Commission of Ontario established under this Part;

R.S.O. 1970,
c. 425

(b) "committee" means a French-language advisory committee or an English-language advisory committee established under Part V of *The Secondary Schools and Boards of Education Act*;

(c) "ratepayer" in respect of a board means a person entitled to vote at an election of members of the board.

Establish-
ment of
Commission

88b.—(1) A commission to be known as the Languages of Instruction Commission of Ontario is hereby established and shall be composed of five members appointed by the Lieutenant Governor in Council at least two of whom shall be French-speaking and at least two of whom shall be English-speaking, and one of the members shall be appointed as chairman.

Term, re-
appointment
and
remuneration

(2) Members of the Commission shall hold office for a term of three years, may be re-appointed, and shall be paid such remuneration as may be determined by the Lieutenant Governor in Council.

Vacancies

(3) Where a vacancy occurs in the membership of the Commission, the vacancy may be filled for the unexpired portion of the term of the person whose office has become vacant.

Commission
is responsi-
ble to the
Minister

(4) The Commission is responsible to the Minister for its operation and shall be assisted by such employees in the public service of Ontario as the Minister may assign for the purpose.

Quorum

(5) A quorum consists of three members of whom at least one shall be French-speaking and one English-speaking.

Recommen-
dation

(6) A recommendation of the Commission requires the approval of at least a majority of the members of the Commission.

Duties of
Commission

(7) The Commission shall consider matters referred to it by committees and requests for advice and assistance on questions in respect of which a committee may make recommendations, from boards and committees, and where there is no committee, from a group of ratepayers of the board concerned determined by the Commission to be representative of the French-speaking or English-speaking minority, as the case may be, within the jurisdiction of the board.

Spokesman

(8) A group referred to in subsection 7 shall name one of its members as its spokesman.

Referral to
Commission
by Minister

(9) The Minister may refer to the Commission any matter relating to instruction in the French language or, where the

pupils of a board who receive instruction in the English language are a minority of the pupils of a board, any matter relating to instruction in the English language.

(10) Where, within the area of jurisdiction of a board, there is doubt as to whether the French-speaking or English-speaking pupils are in the minority, the Commission has the power to determine whether there shall be a French-language advisory committee or an English-language advisory committee, or both, and the board shall establish such committee or committees as the Commission determines.

Determination by Commission re establishment of advisory committee

(11) Where, within thirty days of the election of a committee, the board or the committee requests the Commission to investigate an alleged irregularity respecting the election of a member of the committee, the Commission shall investigate such election and give the member an opportunity to make representation to the Commission and shall declare the member to be elected or declare his seat vacant and shall send a copy of its decision and reasons therefor to the board or committee and to the member.

Investigation of irregularity

(12) When a matter is referred to the Commission, the board concerned shall defer action thereon until the matter has been resolved.

Deferral of action by board

(13) When a matter is referred to the Commission it may

Commission may request mediation or reject referral

(a) request the Minister to appoint one or more mediators where it considers that the furtherance of such matter may be conducive to meeting the educational and cultural needs of the French-speaking or the English-speaking community; or

(b) except where a matter is referred by the Minister, take no further action where it considers that the furtherance of such matter is not conducive to meeting the educational and cultural needs of the French-speaking or the English-speaking community.

(14) Where the Commission takes no further action on a referral it shall forthwith send notice in writing of its decision and of the reasons therefor to the board, the Minister and either the committee or the spokesman referred to in subsection 8.

Where referral rejected

88c.—(1) The Minister may appoint one or more mediators as requested by the Commission.

Appointment of mediator

(2) Where the Minister makes an appointment under subsection 1 he shall communicate the name and address of each mediator to,

Notices re mediator or mediators

- (a) the chairman of the Commission ;
- (b) the secretary of the board ; and
- (c) the chairman of the committee,

and where a committee has not been established by a board, to the spokesman of the group referred to in subsection 8 of section 88*b*.

Remunera-
tion

(3) Mediators shall be paid such remuneration as the Lieutenant Governor in Council may determine.

Who not
eligible as
mediator
Duties of
mediator

(4) A mediator shall not be a member of the Commission.

(5) The mediator or mediators shall, after inquiring into the matter referred for mediation and conferring with the parties involved, endeavour to bring about an agreement and shall, within thirty days of being appointed, report to the Commission the agreement that has been reached, or the failure to bring about agreement.

Extension of
period of
mediation

(6) The period referred to in subsection 5 may be extended by the Minister or by agreement of the parties to the mediation.

Duties of
Commission

88*d*.—(1) Where the report of the mediator or mediators to the Commission indicates failure to bring about an agreement, the Commission shall consider and inquire into all pertinent aspects of the matter referred to mediation and shall, within thirty days of its receipt of the report, recommend to the board in writing a course of action that it considers appropriate to settle the matter and shall send copies of its recommendation to the Minister, the committee and the spokesman referred to in subsection 8 of section 88*b*.

Report of
board to
Minister

(2) Within sixty days of its receipt of a copy of the recommendation of the Commission, the board shall report in writing to the Minister its decision in respect of the recommendation of the Commission and shall forward copies of the decision to the Commission and to the committee or spokesman of the group, as the case may be.

Cost

88*e*. The expenditures necessary for the purposes of the Commission and the mediators under this Part shall be payable until the 31st day of March, 1974, out of the Consolidated Revenue Fund and thereafter out of moneys appropriated therefor by the Legislature.

Commence-
ment

19.—(1) This Act, except sections 2, 4, 5 and 7, comes into force on the day it receives Royal Assent.

(2) Sections 2, 4, 5 and 7 come into force on the 1st day^{Idem} of July, 1973.

20. This Act may be cited as *The Schools Administration Amend-*^{Short title}
ment Act, 1973.

An Act to amend
The Schools Administration Act

1st Reading

June 22nd, 1973

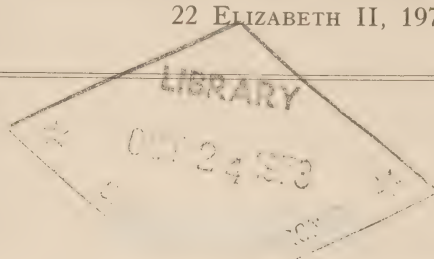
2nd Reading

3rd Reading

THE HON. T. L. WELLS
Minister of Education

(Government Bill)

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973



An Act to amend The Schools Administration Act

THE HON. T. L. WELLS
Minister of Education

(Reprinted as amended by the Committee of the Whole House)

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1.—Subsection 1. The definition of occasional teacher is revised for clarification.

Subsection 2. The definition of permanent improvement is amended to include the obtaining of an electrical power supply.

Subsection 3. A definition of school day is provided.

Subsection 4. The amendment is to make it clear that the meaning of school site includes an interest in land.

An Act to amend The Schools Administration Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Paragraph 16 of subsection 2 of section 1 of *The Schools Administration Act*, being chapter 424 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor:

16. “occasional teacher” means a teacher employed to teach as a substitute for a permanent, probationary or temporary teacher who has died during the school year or who is absent from his regular duties for a temporary period that is less than a school year and that does not extend beyond the end of a school year.

- (2) Subparagraph vi of paragraph 18 of subsection 2 of the said section 1 is repealed and the following substituted therefor:

vi. the obtaining of a water supply or an electrical power supply on the school property or the conveying of a water supply or an electrical power supply to the school from outside the school property.

- (3) Subsection 2 of the said section 1, as amended by the Statutes of Ontario, 1971, chapter 90, section 1, 1972, chapter 1, section 62, and 1972, chapter 77, section 1, is further amended by adding thereto the following paragraph:

26a. “school day” means a day that is within a school year and is not a school holiday.

- (4) Paragraph 29 of subsection 2 of the said section 1 is amended by inserting after “land” in the first line “or interest therein”.

s. 1 (2),
amended

- (5) Subsection 2 of the said section 1 is further amended by adding thereto the following paragraph:

29a. "school year" means the period prescribed as such by, or approved as such under, the regulations.

s. 3,
repealed

2. Section 3 of the said Act is repealed.

s. 4 (1),
re-enacted

3. Subsection 1 of section 4 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 77, section 2, is repealed and the following substituted therefor:

Closing of
school or
class by
board

(1) A board may close or authorize the closing of a school or class for a temporary period where such closing appears unavoidable because of,

(a) failure of transportation arrangements; or

(b) inclement weather, fire, flood, the breakdown of the school heating plant, or a similar emergency.

s. 5,
repealed

4. Section 5 of the said Act is repealed.

s. 6,
amended

5. Section 6 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 77, section 3, is further amended by adding thereto the following subsection:

Where school
year varied

(2a) Where a school year approved by the Minister does not commence on the day following Labour Day, references to the first school day in September and the last school day in June in subsections 1 and 2 shall be read as the first school day in the school year and the last school day in the school year respectively for the purpose of compulsory attendance of pupils of the school or schools or parts thereof to which the school year applies.

s. 12 (1) (a),
re-enacted

6. Clause *a* of subsection 1 of section 12 of the said Act is repealed and the following substituted therefor:

(a) report to the appropriate school attendance counsellor and supervisory officer the names, ages and residences of all pupils of compulsory school age who have not attended school as required.

s. 16 (3),
re-enacted

7. Subsection 3 of section 16 of the said Act is repealed and the following substituted therefor:

Salary of
teacher

(3) Unless otherwise expressly agreed, a teacher is entitled to be paid his salary in the proportion that the number of school days for which he is employed in the school year bears to the total number of school days in the school year.

Subsection 5. A definition of school year is provided.

SECTION 2.—The provisions prescribing the school year are to be transferred to the regulations made under *The Ministry of Education Act*.

SECTION 3.—The amendment permits a board to close a school or class for a temporary period in certain emergencies.

SECTION 4.—Provision for a variation of the school year is to be transferred to the regulations made under *The Ministry of Education Act*.

SECTION 5.—The new subsection relates compulsory attendance dates to the first and last days of the school year where the Minister has approved a variation in the school year as provided in the regulations to be made under *The Ministry of Education Act*.

SECTION 6.—The provision is revised to delete an obsolete reference to regulations relating to principals' reports and to require the principal of a secondary school as well as of an elementary school to report to the supervisory officer.

SECTION 7.—The subsection is re-enacted to make reference to school days rather than teaching days.

SECTION 8.—Subsection 1. The amendment updates the jurisdiction under which educational conferences for teachers are organized and requires teachers to participate in programs that are established for the days in the school year that are not instructional days for all pupils.

Subsection 2. The clause is re-enacted to require the principal to conduct the school in accordance with a school calendar and to make the school calendar available where the board varies the school year.

Subsection 3. The amendment deletes reference to the school term and requires a principal to hold such examinations as he may require and to report a pupil's progress as required by the board.

SECTION 9. The amendment is to provide that where a request is refused by a principal it shall be considered by the supervisory officer before being referred to a person designated by the Minister for a hearing and to specify who are parties at the hearing.

SECTION 10.—Subsection 1. Complementary to amendments allowing for variation in the school term.

8.—(1) Clause *h* of subsection 1 of section 21 of the said Act is ^{s. 21 (1) (h),} repealed and the following substituted therefor: ^{re-enacted}

(*h*) to attend the educational conference that is approved ^{educational} by the appropriate supervisory officer under the ^{conferences} regulations;

(*ha*) to participate in professional activity days as deter- ^{professional} mined by the board under the regulations. ^{activity days}

(2) Clause *d* of subsection 2 of the said section 21 is repealed ^{s. 21 (2) (d),} and the following substituted therefor: ^{re-enacted}

(*d*) to prepare a timetable, to conduct the school ^{timetable} according to such timetable and the school calendar or calendars applicable thereto and to make the calendar or calendars and the timetable accessible to the pupils, teachers and supervisory officers.

(3) Clause *e* of subsection 2 of the said section 21 is repealed ^{s. 21 (2) (e),} and the following substituted therefor: ^{re-enacted}

(*e*) to hold, subject to the approval of the appropriate ^{examinations} supervisory officer, such examinations as he considers ^{and reports} necessary for the promotion of pupils or for any other purpose and report as required by the board the progress of the pupil to his parent or guardian where the pupil is a minor and otherwise to the pupil.

9. Subsection 5 of section 21*a* of the said Act, as enacted by ^{s. 21*a* (5),} the Statutes of Ontario, 1972, chapter 77, section 14, is repealed ^{re-enacted} and the following substituted therefor:

(5) Where the principal refuses to comply with a request ^{Reference} under subsection 4, the pupil, parent or guardian who made ^{where dis-} the request may, in writing, require the principal to refer the ^{agreement} request to the appropriate supervisory officer who shall either require the principal to comply with the request or submit the record and the request to a person designated by the Minister, and such person shall hold a hearing at which the principal and the person who made the request are the parties to the proceedings, and the person so designated shall, after the hearing, decide the matter, and his decision is final and binding upon the parties to the proceedings.

10.—(1) Paragraph 8 of section 34 of the said Act is amended by ^{s. 34,} striking out “term” in the second line and inserting in lieu ^{par. 8,} thereof “year”. ^{amended}

s. 34,
par. 9,
amended

- (2) Paragraph 9 of the said section 34 is amended by striking out "term" in the second line and inserting in lieu thereof "year".

s. 34,
par. 18,
amended

- (3) Paragraph 18 of the said section 34, as re-enacted by the Statutes of Ontario, 1971, chapter 90, section 5, is amended by inserting after "municipality" in the tenth line and in the eleventh line "or board".

s. 34,
amended

- (4) The said section 34 is amended by adding thereto the following paragraph:

borrowing
from funds

19. notwithstanding any other Act, borrow, for any purpose for which the board has authority to spend money, any moneys in any fund established by the board that are not immediately required by the board for the purposes of such fund, but such borrowing shall not extend beyond the term of office of the members of the board and, where secondary school moneys are borrowed for public school purposes or public school moneys are borrowed for secondary school purposes, the board shall pay interest to the fund from which such moneys are borrowed at a rate not less than that being earned by the fund at the date of borrowing.

s. 34,
par. 40,
amended

- (5) Paragraph 40 of the said section 34 is amended by striking out "and specify when such leave shall be taken" in the second and third lines.

s. 37,
amended

- 11.** Section 37 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 90, section 6 and 1972, chapter 77, section 21, is further amended by adding thereto the following subsection:

Cost of
special
services

- (2a) A board shall not enter into an agreement under subsection 1 or 2 that requires the board to provide special services for Indian pupils that it does not provide for its resident pupils unless, in addition to the fees prescribed in subsection 1 or 2, the cost of such services is payable by the Crown in right of Canada.

s. 39,
re-enacted

- 12.** Section 39 of the said Act is repealed and the following substituted therefor:

French-
language
elementary
schools and
classes

- 39.—(1) A board of education, public school board or separate school board may establish and maintain elementary schools or classes in elementary schools, including kindergarten classes, for the purpose of providing for the use of the French language in instruction.

French-
language
classes

- (2) Where, after the first school day in September and on or before the 1st day of April in any year, written evidence is

Subsection 2. Complementary to amendments allowing for variation in the school term.

Subsection 3. The amendment permits a board to lend money to another board as well as to a municipality.

Subsection 4. The amendment provides under certain specified conditions for the temporary use by a board of moneys held in funds established by it.

Subsection 5. The provisions respecting maternity leave are amended to render the provision consistent with the provisions of Part II-A of *The Employment Standards Act*.

SECTION 11. The amendment provides that a board may not enter into an agreement to provide special services for Indian pupils that are not made available by a board to its own resident pupils unless the cost therefor is payable by the Government of Canada.

SECTION 12. The provisions respecting French-language and English-language elementary schools and classes are re-enacted to require decisions to be made within the time limits provided and to reduce the minimum size of the groups of pupils necessary to establish classes. Provision is also made for the establishment of admissions committees to admit to French-speaking classes pupils who would not normally be included as French-speaking pupils. Section 39*a* provides for the advisory committee established in relation to the secondary schools of a board of education to assume similar responsibilities for public school classes.

presented to a board referred to in subsection 1 that a number of French-speaking pupils resident in the school section or separate school zone have elected to be taught in the French language, the board shall forthwith determine whether French-speaking pupils can be assembled for this purpose in one or more classes or groups of twenty-five or more and, where the board determines that such pupils can be so assembled, it shall provide for the use of the French language in instruction in such classes or groups commencing on the first school day of the following year.

(3) Where the evidence referred to in subsection 2 is ^{Idem} presented to the board after the 1st day of April and before the first school day in September in any year, the board shall make the determination required under subsection 2 and, where the board determines that French-speaking pupils can be assembled in classes or groups of twenty-five or more for the use of the French language in instruction, the board may, commencing on the first school day in January of the following year, and shall, commencing on the first school day in September of such following year, provide for the use of the French language in instruction in such classes or groups.

(4) Where a board referred to in subsection 1 provides or ^{French-language schools} is required to provide for the use of the French language in instruction and in the opinion of the board the number of pupils who elect to be taught in the French language so warrants, the board shall provide a French-language elementary school.

(5) Notwithstanding subsections 1, 2, 3 and 4, English may ^{English as subject of instruction} be a subject of instruction in any grade and shall be a subject of instruction in Grade 5 and all subsequent grades in an elementary school.

(6) A board, on the request of the parent or guardian of an ^{Admission of pupils other than French-speaking pupils} English-speaking pupil of the board, or of the pupil where he is an adult, may admit the pupil to a class formed under subsection 1, 2 or 3 or to a school provided under subsection 4 if his admission is approved by majority vote of an admissions committee appointed by the board, and composed of the principal of the school to which admission is requested, a teacher who uses the French language in instruction in such school and, subject to subsection 7, a French-speaking supervisory officer employed by the board.

(7) Where a board does not employ a French-speaking ^{Where board has no French-speaking supervisory officer} supervisory officer, it shall arrange for a French-speaking supervisory officer employed by another board or by the Minister to serve as a member of the admissions committee.

English
language
schools or
classes

(8) Where a board has provided one or more French language elementary schools under subsection 4 and a number of pupils of the board elect to be taught in the English language, subsections 1, 2 and 3 apply *mutatis mutandis* in respect of provision for the use of the English language in instruction.

Duties and
responsi-
bilities of
advisory
committee
in public
schools
R.S.O. 1970,
c. 425

39a. Where, under Part V of *The Secondary Schools and Boards of Education Act*, a board of education has established a French-language advisory committee or an English-language advisory committee, the committee has the same duties and responsibilities in respect of the French-language schools and classes or English-language schools and classes, as the case may be, that are provided in the public schools operated by the board of education as it has in respect of French-language instructional units or English-language schools and classes, as the case may be, for secondary school purposes.

s. 46,
amended

- 13.** Section 46 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 77, section 24, is amended by adding thereto the following subsection:

Participation
of retired
person in
contract

(3) A board may retain a person who retires from employment with the board before he attains the age of sixty-five years in a group established for the purposes of a contract referred to in clause *a* of subsection 1 until he attains such age if he pays the full premium required to be paid to retain his participation in the contract.

s. 58,
re-enacted

- 14.** Section 58 of the said Act is repealed and the following substituted therefor:

Action for
declaration
that seat
vacant

58.—(1) Any person entitled to vote at the election of members of a board may commence an action by writ in the county or district court in the county or district in which the head office of the board is situate for a declaration that the office of a member of such board has become vacant under section 39 of *The Secondary Schools and Boards of Education Act*, section 91 of *The Separate Schools Act* or section 49, 50 or 57 of this Act.

R.S.O. 1970,
c. 430

Time for
bringing
action

(2) No action shall be commenced under this section more than ninety days after the facts alleged to cause the vacancy in the board came to the knowledge of the person bringing such action.

Power of
court

(3) Where in an action under this section the court finds that the office of a member of the board has become vacant, the court may order that the member be removed from office and declare that the office is vacant.

SECTION 13. The amendment will permit a board to include an employee who retires before he is sixty-five years of age in its insurance plan for group life, group accident and hospital, medical, surgical, nursing or dental services until he reaches such age.

SECTION 14. The section, as re-enacted, makes the procedures to vacate the seat of a member of a school board consistent with those procedures to vacate the seat of a member of a municipal council.

SECTION 15. This section is no longer operative since the years of election of trustees and their terms of office are provided under *The Municipal Elections Act, 1972*.

SECTION 16. The amendments are for clarification and to permit a board to lease a site from any owner of land for the purpose of building a school provided the approval of the Minister is obtained.

SECTION 17.—The subsection, as re-enacted, provides that a board may borrow from any source provided that the interest and other charges do not exceed the amounts that would be charged by the majority of chartered banks.

SECTION 18.—As a result of the recommendations of the Ministerial Commission on French-Language Education, a new Part IX-A is enacted to establish the Languages of Instruction Commission of Ontario which will be responsible to the Minister. The Commission will consider matters referred to it by the Minister and by school boards or French-language or English-language advisory committees and make recommendations to the board. Provision is made for the appointment of mediators to inquire into matters of disagreement and endeavour to effect agreements that are conducive to meeting the educational and cultural needs of the French-speaking or English-speaking community.

(4) The provisions of sections 105 to 108 and 112 of *The Municipal Elections Act, 1972* apply *mutatis mutandis* to an action brought under this section. Application of 1972, c. 95

(5) A claim in an action under this section may be joined with a claim in an action under section 104 of *The Municipal Elections Act, 1972*, and such claims may be heard and disposed of in the same action. Joining of claims

15. Section 60 of the said Act is repealed.

s. 60,
repealed

16. Subsections 3 and 4 of section 61 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 77, section 27, are repealed and the following substituted therefor:

s. 61 (3, 4),
re-enacted

(3) Subject to section 63, a board may erect buildings for its purposes on land owned by the board. Buildings on land owned by board

(4) A board may erect a school building on land that is leased by the board where the term of the lease, the school site and the plans of the school building are approved by the Minister. Buildings on leased land

17. Subsection 1 of section 71 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 90, section 9 and 1972, chapter 77, section 31, is repealed and the following substituted therefor:

s. 71 (1),
re-enacted

(1) Notwithstanding the provisions of any general or special Act, a board may by resolution authorize the treasurer and the chairman or vice-chairman to borrow from time to time by way of a promissory note, such sums as the board considers necessary to meet the current expenditures of the board until the current revenue has been received, provided that the interest and any other charges connected therewith do not exceed the interest that would be payable at the minimum lending rate of the majority of chartered banks on the date of borrowing. Current borrowing

18. The said Act is amended by adding thereto the following Part:

Part IX-A,
enacted

PART IX-A

LANGUAGES OF INSTRUCTION COMMISSION OF ONTARIO

88a. In this Part,

Interpre-
tation

(a) "Commission" means the Languages of Instruction Commission of Ontario established under this Part;

R.S.O. 1970,
c. 425

(b) "committee" means a French-language advisory committee or an English-language advisory committee established under Part V of *The Secondary Schools and Boards of Education Act*;

(c) "ratepayer" in respect of a board means a person entitled to vote at an election of members of the board.

Establish-
ment of
Commission

88b.—(1) A commission to be known as the Languages of Instruction Commission of Ontario is hereby established and shall be composed of five members appointed by the Lieutenant Governor in Council at least two of whom shall be French-speaking and at least two of whom shall be English-speaking, and one of the members shall be appointed as chairman.

Term, re-
appointment
and
remuneration

(2) Members of the Commission shall hold office for a term of three years, may be re-appointed, and shall be paid such remuneration as may be determined by the Lieutenant Governor in Council.

Vacancies

(3) Where a vacancy occurs in the membership of the Commission, the vacancy may be filled for the unexpired portion of the term of the person whose office has become vacant.

Commission
is responsi-
ble to the
Minister

(4) The Commission is responsible to the Minister for its operation and shall be assisted by such employees in the public service of Ontario as the Minister may assign for the purpose.

Quorum

(5) A quorum consists of three members of whom at least one shall be French-speaking and one English-speaking.

Recommen-
dation

(6) A recommendation of the Commission requires the approval of at least a majority of the members of the Commission.

Duties of
Commission

(7) The Commission shall consider matters referred to it by committees and requests for advice and assistance on questions in respect of which a committee may make recommendations, from boards and committees, and where there is no committee, from a group of ratepayers of the board concerned determined by the Commission to be representative of the French-speaking or English-speaking minority, as the case may be, within the jurisdiction of the board.

Spokesman

(8) A group referred to in subsection 7 shall name one of its members as its spokesman.

Referral to
Commission
by Minister

(9) The Minister may refer to the Commission any matter relating to instruction in the French language or, where the

pupils of a board who receive instruction in the English language are a minority of the pupils of a board, any matter relating to instruction in the English language.

(10) Where, within the area of jurisdiction of a board, there is doubt as to whether the French-speaking or English-speaking pupils are in the minority, the Commission has the power to determine whether there shall be a French-language advisory committee or an English-language advisory committee, or both, and the board shall establish such committee or committees as the Commission determines.

Determination by Commission re establishment of advisory committee

(11) Where, within thirty days of the election of a committee, the board or the committee requests the Commission to investigate an alleged irregularity respecting the election of a member of the committee, the Commission shall investigate such election and give the member an opportunity to make representation to the Commission and shall declare the member to be elected or declare his seat vacant and shall send a copy of its decision and reasons therefor to the board or committee and to the member.

Investigation of irregularity

(12) When a matter is referred to the Commission, the board concerned shall defer action thereon until the matter has been resolved.

Deferral of action by board

(13) When a matter is referred to the Commission it shall

Commission shall request mediation or reject referral

- (a) forthwith appoint one or more mediators where it considers that the furtherance of such matter may be conducive to meeting the educational and cultural needs of the French-speaking or the English-speaking community; or
- (b) except where a matter is referred by the Minister, take no further action where it considers that the furtherance of such matter is not conducive to meeting the educational and cultural needs of the French-speaking or the English-speaking community.

(14) Where the Commission takes no further action on a referral it shall forthwith send notice in writing of its decision and of the reasons therefor to the board, the Minister and either the committee or the spokesman referred to in subsection 8.

Where referral rejected

(15) Where the Commission makes an appointment under subsection 13 it shall communicate the name and address of each mediator to,

Notice of appointment of mediator

- (a) the Minister;

(b) the secretary of the board; and

(c) the chairman of the committee,

and where a committee has not been established by a board, to the spokesman of the group referred to in subsection 8.

Remunera-
tion

88c.—(1) Mediators shall be paid such remuneration as the Lieutenant Governor in Council may determine.

Who not
eligible as
mediator

(2) A mediator shall not be a member of the Commission.

Duties of
mediator

(3) The mediator or mediators shall, after inquiring into the matter referred for mediation and conferring with the parties involved, endeavour to bring about an agreement and shall, within twenty-one days of being appointed, report to the Commission the agreement that has been reached, or the failure to bring about agreement.

Extension of
period of
mediation

(4) The period referred to in subsection 3 may be extended by the Commission or by agreement of the parties to the mediation.

Duties of
Commission

88d.—(1) Where the report of the mediator or mediators to the Commission indicates failure to bring about an agreement, the Commission shall consider and inquire into all pertinent aspects of the matter referred to mediation and shall, within twenty-one days of its receipt of the report, recommend to the board in writing a course of action that it considers appropriate to settle the matter and shall send copies of its recommendation to the Minister, the committee and the spokesman referred to in subsection 8 of section 88b.

Report of
board to
Minister

(2) Within thirty days of its receipt of a copy of the recommendation of the Commission, the board shall report in writing to the Minister its decision in respect of the recommendation of the Commission and shall forward copies of the decision to the Commission and to the committee or spokesman of the group, as the case may be.

Cost

88e. The expenditures necessary for the purposes of the Commission and the mediators under this Part shall be payable until the 31st day of March, 1974, out of the Consolidated Revenue Fund and thereafter out of moneys appropriated therefor by the Legislature.

Commence-
ment

19.—(1) This Act, except sections 2, 4, 5 and 7, comes into force on the day it receives Royal Assent.

(2) Sections 2, 4, 5 and 7 come into force on the 1st day^{Idem} of July, 1973.

20. This Act may be cited as *The Schools Administration Amend-*^{Short title}
ment Act, 1973.

An Act to amend
The Schools Administration Act

1st Reading

June 22nd, 1973

2nd Reading

October 4th, 1973

3rd Reading

THE HON. T. L. WELLS
Minister of Education

(Reprinted as amended by the
Committee of the Whole House)

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Publications

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act to amend The Schools Administration Act

THE HON. T. L. WELLS
Minister of Education



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

An Act to amend The Schools Administration Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Paragraph 16 of subsection 2 of section 1 of *The Schools Administration Act*, being chapter 424 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor:

16. "occasional teacher" means a teacher employed to teach as a substitute for a permanent, probationary or temporary teacher who has died during the school year or who is absent from his regular duties for a temporary period that is less than a school year and that does not extend beyond the end of a school year.

- (2) Subparagraph vi of paragraph 18 of subsection 2 of the said section 1 is repealed and the following substituted therefor:

vi. the obtaining of a water supply or an electrical power supply on the school property or the conveying of a water supply or an electrical power supply to the school from outside the school property.

- (3) Subsection 2 of the said section 1, as amended by the Statutes of Ontario, 1971, chapter 90, section 1, 1972, chapter 1, section 62, and 1972, chapter 77, section 1, is further amended by adding thereto the following paragraph:

26a. "school day" means a day that is within a school year and is not a school holiday.

- (4) Paragraph 29 of subsection 2 of the said section 1 is amended by inserting after "land" in the first line "or interest therein".

s. 1 (2),
amended

- (5) Subsection 2 of the said section 1 is further amended by adding thereto the following paragraph:

29a. "school year" means the period prescribed as such by, or approved as such under, the regulations.

s. 3,
repealed

2. Section 3 of the said Act is repealed.

s. 4 (1),
re-enacted

3. Subsection 1 of section 4 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 77, section 2, is repealed and the following substituted therefor:

Closing of
school or
class by
board

(1) A board may close or authorize the closing of a school or class for a temporary period where such closing appears unavoidable because of,

(a) failure of transportation arrangements; or

(b) inclement weather, fire, flood, the breakdown of the school heating plant, or a similar emergency.

s. 5,
repealed

4. Section 5 of the said Act is repealed.

s. 6,
amended

5. Section 6 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 77, section 3, is further amended by adding thereto the following subsection:

Where school
year varied

(2a) Where a school year approved by the Minister does not commence on the day following Labour Day, references to the first school day in September and the last school day in June in subsections 1 and 2 shall be read as the first school day in the school year and the last school day in the school year respectively for the purpose of compulsory attendance of pupils of the school or schools or parts thereof to which the school year applies.

s. 12 (1) (a),
re-enacted

6. Clause *a* of subsection 1 of section 12 of the said Act is repealed and the following substituted therefor:

(a) report to the appropriate school attendance counsellor and supervisory officer the names, ages and residences of all pupils of compulsory school age who have not attended school as required.

s. 16 (3),
re-enacted

7. Subsection 3 of section 16 of the said Act is repealed and the following substituted therefor:

Salary of
teacher

(3) Unless otherwise expressly agreed, a teacher is entitled to be paid his salary in the proportion that the number of school days for which he is employed in the school year bears to the total number of school days in the school year.

8.—(1) Clause *h* of subsection 1 of section 21 of the said Act is ^{s. 21 (1) (h),} repealed and the following substituted therefor: _{re-enacted}

(*h*) to attend the educational conference that is approved ^{educational} by the appropriate supervisory officer under the ^{conferences} regulations;

(*ha*) to participate in professional activity days as deter- ^{professional} mined by the board under the regulations. _{activity days}

(2) Clause *d* of subsection 2 of the said section 21 is repealed ^{s. 21 (2) (d),} and the following substituted therefor: _{re-enacted}

(*d*) to prepare a timetable, to conduct the school ^{timetable} according to such timetable and the school calendar or calendars applicable thereto and to make the calendar or calendars and the timetable accessible to the pupils, teachers and supervisory officers.

(3) Clause *e* of subsection 2 of the said section 21 is repealed ^{s. 21 (2) (e),} and the following substituted therefor: _{re-enacted}

(*e*) to hold, subject to the approval of the appropriate ^{examinations} supervisory officer, such examinations as he considers ^{and reports} necessary for the promotion of pupils or for any other purpose and report as required by the board the progress of the pupil to his parent or guardian where the pupil is a minor and otherwise to the pupil.

9. Subsection 5 of section 21*a* of the said Act, as enacted by ^{s. 21*a* (5),} the Statutes of Ontario, 1972, chapter 77, section 14, is repealed _{re-enacted} and the following substituted therefor:

(5) Where the principal refuses to comply with a request ^{Reference} under subsection 4, the pupil, parent or guardian who made ^{where dis-} agreement the request may, in writing, require the principal to refer the request to the appropriate supervisory officer who shall either require the principal to comply with the request or submit the record and the request to a person designated by the Minister, and such person shall hold a hearing at which the principal and the person who made the request are the parties to the proceedings, and the person so designated shall, after the hearing, decide the matter, and his decision is final and binding upon the parties to the proceedings.

10.—(1) Paragraph 8 of section 34 of the said Act is amended by ^{s. 34,} striking out "term" in the second line and inserting in lieu ^{par. 8,} thereof "year". _{amended}

s. 34,
par. 9,
amended

- (2) Paragraph 9 of the said section 34 is amended by striking out "term" in the second line and inserting in lieu thereof "year".

s. 34,
par. 18,
amended

- (3) Paragraph 18 of the said section 34, as re-enacted by the Statutes of Ontario, 1971, chapter 90, section 5, is amended by inserting after "municipality" in the tenth line and in the eleventh line "or board".

s. 34,
amended

- (4) The said section 34 is amended by adding thereto the following paragraph:

borrowing
from funds

19. notwithstanding any other Act, borrow, for any purpose for which the board has authority to spend money, any moneys in any fund established by the board that are not immediately required by the board for the purposes of such fund, but such borrowing shall not extend beyond the term of office of the members of the board and, where secondary school moneys are borrowed for public school purposes or public school moneys are borrowed for secondary school purposes, the board shall pay interest to the fund from which such moneys are borrowed at a rate not less than that being earned by the fund at the date of borrowing.

s. 34,
par. 40,
amended

- (5) Paragraph 40 of the said section 34 is amended by striking out "and specify when such leave shall be taken" in the second and third lines.

s. 37,
amended

- 11.** Section 37 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 90, section 6 and 1972, chapter 77, section 21, is further amended by adding thereto the following subsection:

Cost of
special
services

- (2a) A board shall not enter into an agreement under subsection 1 or 2 that requires the board to provide special services for Indian pupils that it does not provide for its resident pupils unless, in addition to the fees prescribed in subsection 1 or 2, the cost of such services is payable by the Crown in right of Canada.

s. 39,
re-enacted

- 12.** Section 39 of the said Act is repealed and the following substituted therefor:

French-
language
elementary
schools and
classes

- 39.—(1) A board of education, public school board or separate school board may establish and maintain elementary schools or classes in elementary schools, including kindergarten classes, for the purpose of providing for the use of the French language in instruction.

French-
language
classes

- (2) Where, after the first school day in September and on or before the 1st day of April in any year, written evidence is

presented to a board referred to in subsection 1 that a number of French-speaking pupils resident in the school section or separate school zone have elected to be taught in the French language, the board shall forthwith determine whether French-speaking pupils can be assembled for this purpose in one or more classes or groups of twenty-five or more and, where the board determines that such pupils can be so assembled, it shall provide for the use of the French language in instruction in such classes or groups commencing on the first school day of the following year.

(3) Where the evidence referred to in subsection 2 is ^{Idem} presented to the board after the 1st day of April and before the first school day in September in any year, the board shall make the determination required under subsection 2 and, where the board determines that French-speaking pupils can be assembled in classes or groups of twenty-five or more for the use of the French language in instruction, the board may, commencing on the first school day in January of the following year, and shall, commencing on the first school day in September of such following year, provide for the use of the French language in instruction in such classes or groups.

(4) Where a board referred to in subsection 1 provides or ^{French-language schools} is required to provide for the use of the French language in instruction and in the opinion of the board the number of pupils who elect to be taught in the French language so warrants, the board shall provide a French-language elementary school.

(5) Notwithstanding subsections 1, 2, 3 and 4, English may ^{English as subject of instruction} be a subject of instruction in any grade and shall be a subject of instruction in Grade 5 and all subsequent grades in an elementary school.

(6) A board, on the request of the parent or guardian of an ^{Admission of pupils other than French-speaking pupils} English-speaking pupil of the board, or of the pupil where he is an adult, may admit the pupil to a class formed under subsection 1, 2 or 3 or to a school provided under subsection 4 if his admission is approved by majority vote of an admissions committee appointed by the board, and composed of the principal of the school to which admission is requested, a teacher who uses the French language in instruction in such school and, subject to subsection 7, a French-speaking supervisory officer employed by the board.

(7) Where a board does not employ a French-speaking ^{Where board has no French-speaking supervisory officer} supervisory officer, it shall arrange for a French-speaking supervisory officer employed by another board or by the Minister to serve as a member of the admissions committee.

English
language
schools or
classes

(8) Where a board has provided one or more French language elementary schools under subsection 4 and a number of pupils of the board elect to be taught in the English language, subsections 1, 2 and 3 apply *mutatis mutandis* in respect of provision for the use of the English language in instruction.

Duties and
responsi-
bilities of
advisory
committee
in public
schools
R.S.O. 1970,
c. 425

39a. Where, under Part V of *The Secondary Schools and Boards of Education Act*, a board of education has established a French-language advisory committee or an English-language advisory committee, the committee has the same duties and responsibilities in respect of the French-language schools and classes or English-language schools and classes, as the case may be, that are provided in the public schools operated by the board of education as it has in respect of French-language instructional units or English-language schools and classes, as the case may be, for secondary school purposes.

s. 46,
amended

13. Section 46 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 77, section 24, is amended by adding thereto the following subsection:

Participation
of retired
person in
contract

(3) A board may retain a person who retires from employment with the board before he attains the age of sixty-five years in a group established for the purposes of a contract referred to in clause *a* of subsection 1 until he attains such age if he pays the full premium required to be paid to retain his participation in the contract.

s. 58,
re-enacted

14. Section 58 of the said Act is repealed and the following substituted therefor:

Action for
declaration
that seat
vacant

58.—(1) Any person entitled to vote at the election of members of a board may commence an action by writ in the county or district court in the county or district in which the head office of the board is situate for a declaration that the office of a member of such board has become vacant under section 39 of *The Secondary Schools and Boards of Education Act*, section 91 of *The Separate Schools Act* or section 49, 50 or 57 of this Act.

R.S.O. 1970,
c. 430

Time for
bringing
action

(2) No action shall be commenced under this section more than ninety days after the facts alleged to cause the vacancy in the board came to the knowledge of the person bringing such action.

Power of
court

(3) Where in an action under this section the court finds that the office of a member of the board has become vacant, the court may order that the member be removed from office and declare that the office is vacant.

(4) The provisions of sections 105 to 108 and 112 of *The Municipal Elections Act, 1972* apply *mutatis mutandis* to an action brought under this section. Application of 1972, c. 95

(5) A claim in an action under this section may be joined with a claim in an action under section 104 of *The Municipal Elections Act, 1972*, and such claims may be heard and disposed of in the same action. Joining of claims

15. Section 60 of the said Act is repealed.

s. 60,
repealed

16. Subsections 3 and 4 of section 61 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 77, section 27, are repealed and the following substituted therefor:

s. 61 (3, 4),
re-enacted

(3) Subject to section 63, a board may erect buildings for its purposes on land owned by the board.

Buildings
on land
owned by
board

(4) A board may erect a school building on land that is leased by the board where the term of the lease, the school site and the plans of the school building are approved by the Minister.

Buildings
on leased
land

17. Subsection 1 of section 71 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 90, section 9 and 1972, chapter 77, section 31, is repealed and the following substituted therefor:

s. 71 (1),
re-enacted

(1) Notwithstanding the provisions of any general or special Act, a board may by resolution authorize the treasurer and the chairman or vice-chairman to borrow from time to time by way of a promissory note, such sums as the board considers necessary to meet the current expenditures of the board until the current revenue has been received, provided that the interest and any other charges connected therewith do not exceed the interest that would be payable at the minimum lending rate of the majority of chartered banks on the date of borrowing.

Current
borrowing

18. The said Act is amended by adding thereto the following Part:

Part IX-A,
enacted

PART IX-A

LANGUAGES OF INSTRUCTION COMMISSION OF ONTARIO

88a. In this Part,

Interpre-
tation

(a) "Commission" means the Languages of Instruction Commission of Ontario established under this Part;

R.S.O. 1970,
c. 425

(b) "committee" means a French-language advisory committee or an English-language advisory committee established under Part V of *The Secondary Schools and Boards of Education Act*;

(c) "ratepayer" in respect of a board means a person entitled to vote at an election of members of the board.

Establish-
ment of
Commission

88b.—(1) A commission to be known as the Languages of Instruction Commission of Ontario is hereby established and shall be composed of five members appointed by the Lieutenant Governor in Council at least two of whom shall be French-speaking and at least two of whom shall be English-speaking, and one of the members shall be appointed as chairman.

Term, re-
appointment
and
remuneration

(2) Members of the Commission shall hold office for a term of three years, may be re-appointed, and shall be paid such remuneration as may be determined by the Lieutenant Governor in Council.

Vacancies

(3) Where a vacancy occurs in the membership of the Commission, the vacancy may be filled for the unexpired portion of the term of the person whose office has become vacant.

Commission
is responsi-
ble to the
Minister

(4) The Commission is responsible to the Minister for its operation and shall be assisted by such employees in the public service of Ontario as the Minister may assign for the purpose.

Quorum

(5) A quorum consists of three members of whom at least one shall be French-speaking and one English-speaking.

Recommen-
dation

(6) A recommendation of the Commission requires the approval of at least a majority of the members of the Commission.

Duties of
Commission

(7) The Commission shall consider matters referred to it by committees and requests for advice and assistance on questions in respect of which a committee may make recommendations, from boards and committees, and where there is no committee, from a group of ratepayers of the board concerned determined by the Commission to be representative of the French-speaking or English-speaking minority, as the case may be, within the jurisdiction of the board.

Spokesman

(8) A group referred to in subsection 7 shall name one of its members as its spokesman.

Referral to
Commission
by Minister

(9) The Minister may refer to the Commission any matter relating to instruction in the French language or, where the

pupils of a board who receive instruction in the English language are a minority of the pupils of a board, any matter relating to instruction in the English language.

(10) Where, within the area of jurisdiction of a board, there is doubt as to whether the French-speaking or English-speaking pupils are in the minority, the Commission has the power to determine whether there shall be a French-language advisory committee or an English-language advisory committee, or both, and the board shall establish such committee or committees as the Commission determines.

Determination by Commission re establishment of advisory committee

(11) Where, within thirty days of the election of a committee, the board or the committee requests the Commission to investigate an alleged irregularity respecting the election of a member of the committee, the Commission shall investigate such election and give the member an opportunity to make representation to the Commission and shall declare the member to be elected or declare his seat vacant and shall send a copy of its decision and reasons therefor to the board or committee and to the member.

Investigation of irregularity

(12) When a matter is referred to the Commission, the board concerned shall defer action thereon until the matter has been resolved.

Deferral of action by board

(13) When a matter is referred to the Commission it shall,

Commission shall request mediation or reject referral

(a) forthwith appoint one or more mediators where it considers that the furtherance of such matter may be conducive to meeting the educational and cultural needs of the French-speaking or the English-speaking community; or

(b) except where a matter is referred by the Minister, take no further action where it considers that the furtherance of such matter is not conducive to meeting the educational and cultural needs of the French-speaking or the English-speaking community.

(14) Where the Commission takes no further action on a referral it shall forthwith send notice in writing of its decision and of the reasons therefor to the board, the Minister and either the committee or the spokesman referred to in subsection 8.

Where referral rejected

(15) Where the Commission makes an appointment under subsection 13 it shall communicate the name and address of each mediator to,

Notice of appointment of mediator

(a) the Minister;

(b) the secretary of the board; and

(c) the chairman of the committee,

and where a committee has not been established by a board, to the spokesman of the group referred to in subsection 8.

Remunera-
tion

88c.—(1) Mediators shall be paid such remuneration as the Lieutenant Governor in Council may determine.

Who not
eligible as
mediator
Duties of
mediator

(2) A mediator shall not be a member of the Commission.

(3) The mediator or mediators shall, after inquiring into the matter referred for mediation and conferring with the parties involved, endeavour to bring about an agreement and shall, within twenty-one days of being appointed, report to the Commission the agreement that has been reached, or the failure to bring about agreement.

Extension of
period of
mediation

(4) The period referred to in subsection 3 may be extended by the Commission or by agreement of the parties to the mediation.

Duties of
Commission

88d.—(1) Where the report of the mediator or mediators to the Commission indicates failure to bring about an agreement, the Commission shall consider and inquire into all pertinent aspects of the matter referred to mediation and shall, within twenty-one days of its receipt of the report, recommend to the board in writing a course of action that it considers appropriate to settle the matter and shall send copies of its recommendation to the Minister, the committee and the spokesman referred to in subsection 8 of section 88b.

Report of
board to
Minister

(2) Within thirty days of its receipt of a copy of the recommendation of the Commission, the board shall report in writing to the Minister its decision in respect of the recommendation of the Commission and shall forward copies of the decision to the Commission and to the committee or spokesman of the group, as the case may be.

Cost

88e. The expenditures necessary for the purposes of the Commission and the mediators under this Part shall be payable until the 31st day of March, 1974, out of the Consolidated Revenue Fund and thereafter out of moneys appropriated therefor by the Legislature.

Commence-
ment

19.—(1) This Act, except sections 2, 4, 5 and 7, comes into force on the day it receives Royal Assent.

(2) Sections 2, 4, 5 and 7 come into force on the 1st day^{Idem} of July, 1973.

20. This Act may be cited as *The Schools Administration Amendment Act, 1973*.^{Short title}

An Act to amend
The Schools Administration Act

1st Reading

June 22nd, 1973

2nd Reading

October 4th, 1973

3rd Reading

October 11th, 1973

THE HON. T. L. WELLS
Minister of Education

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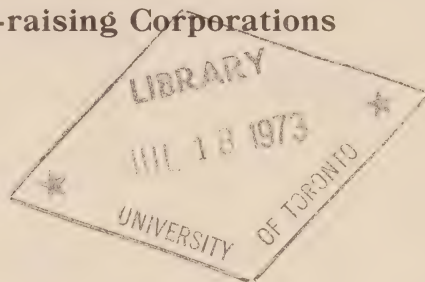
Publication

BILL 182

Private Member's Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

**An Act to control
Professional Fund-raising Corporations**



MR. NEWMAN (Windsor-Walkerville)

TORONTO

PRINTED AND PUBLISHED BY THE QUEEN'S PRINTER AND PUBLISHER

EXPLANATORY NOTE

The Bill provides for the licensing of professional fund-raising corporations.

BILL 182

1973

An Act to control Professional Fund-raising Corporations

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "Commissioner" means the Commissioner of professional fund-raising corporations;
- (b) "Director" means the Director of the Consumer Protection Division of the Ministry;
- (c) "Minister" means the Minister of Consumer and Commercial Relations;
- (d) "Ministry" means the Ministry of Consumer and Commercial Relations;
- (e) "professional fund-raising corporation" means a corporation that has as its objects, the raising of money for non-profit organizations in return for remuneration of any kind and includes a sole proprietorship or partnership which raises money for non-profit organizations in return for remuneration of any kind;
- (f) "regulations" means the regulations made under this Act;
- (g) "Tribunal" means The Commercial Registration Appeal Tribunal established under *The Department of Financial and Commercial Affairs Act*. R.S.O. 1970,
c. 113

COMMISSIONER

2.—(1) There shall be a Commissioner of professional fund-raising corporations who shall be appointed by the Lieutenant Governor in Council. Commis-
sioner

Powers
and duties
of Com-
missioner

(2) The Commissioner may exercise the powers and shall discharge the duties conferred and imposed upon him by this Act and the regulations under the supervision of the Director.

LICENSING

Licensing

3.—(1) No person shall engage in business as a professional fund-raising corporation unless he is licensed as a professional fund-raising corporation.

Change in
partnership

(2) Where a partnership is licensed under subsection 1, any change in the membership of the partnership shall be deemed to create a new partnership for the purpose of licensing.

Licensing,
exception

4.—(1) An applicant is entitled to a licence or renewal of a licence by the Commissioner except where,

- (a) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business; or
- (b) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; or
- (c) the applicant is a corporation and,
 - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
 - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or
- (d) the applicant is carrying on activities that are, or will be, if the applicant is licensed, in contravention of this Act or the regulations.

Conditions of
a licence

(2) A licence is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant, imposed by the Tribunal or prescribed by the regulations.

Refusal
to grant
a licence

5.—(1) Subject to section 9, the Commissioner may refuse to grant a licence to an applicant where in the Commissioner's opinion the applicant is disentitled to a licence under section 4.

(2) Subject to section 6, the Commissioner may refuse to ^{Revocation} renew or may suspend or revoke a licence for any reason that would disentitle the licensee to a licence under section 4 if he were an applicant or where the licensee is in breach of a term or condition of the licence.

6.—(1) Where the Commissioner proposes to refuse to ^{Notice of proposal to refuse or revoke} grant or renew a licence or proposes to suspend or revoke a licence, he shall serve notice of his proposal, together with written reasons therefor, on the applicant or licensee.

(2) A notice under subsection 1 shall inform the applicant or licensee that he is entitled to a hearing by the Tribunal ^{Notice requiring hearing} if he mails or delivers, within fifteen days after the notice under section 1 is served on him, notice in writing requiring a hearing to the Commissioner and the Tribunal, and he may so require such a hearing.

(3) Where an applicant or licensee does not require a hearing ^{Powers of Commissioner where no hearing} by the Tribunal in accordance with subsection 2, the Commissioner may carry out the proposal stated in his notice under subsection 1.

(4) Where an applicant or licensee requires a hearing by the Tribunal in accordance with subsection 2, the Tribunal shall appoint a time for and hold the hearing and, on the application of the Commissioner at the hearing, may by order direct the Commissioner to carry out his proposal or refrain from carrying out his proposal and to take such action as the Tribunal considers the Commissioner ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Commissioner. ^{Powers of Tribunal where hearing}

(5) The Tribunal may attach such terms and conditions ^{Conditions of order} to its order or to the licence as it considers proper to give effect to the purposes of this Act.

(6) The Commissioner, the applicant or licensee who has ^{Parties} required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

(7) Notwithstanding subsection 1, the Commissioner may ^{Voluntary cancellation} cancel a licence upon the request in writing of the licensee in the prescribed form surrendering his licence.

(8) Where, within the time prescribed therefor or, if no ^{Continuation of licence pending renewal} time is prescribed, before expiry of his licence, a licensee has applied for renewal of his licence and paid the prescribed fee, his licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where he is served with notice that the Commissioner proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its order.

Order of
Tribunal
effective, stay
R.S.O. 1970,
c. 113

(9) Notwithstanding that a licensee appeals from an order of the Tribunal under section 9b of *The Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately, but the Tribunal may grant a stay until disposition of the appeal.

Further
applications

7. A further application for a licence may be made upon new or other evidence or where it is clear that material circumstances have changed.

Investiga-
tion of
complaints

8.—(1) Where the Commissioner receives a complaint in respect of a professional fund-raising corporation and so requests in writing, the professional fund-raising corporation shall furnish the Commissioner with such information respecting the matter complained of as the Commissioner requires.

Idem

(2) The request under subsection 1 shall indicate the nature of the inquiry involved.

Idem

(3) For the purposes of subsection 1, the Commissioner or any person designated in writing by him may at any reasonable time enter upon the business premises of the licensee to make an inspection in relation to the complaint.

Inspection

9.—(1) The Commissioner or any person designated by him in writing may at any reasonable time enter upon the business premises of the licensee to make an inspection to ensure that the provisions of this Act and the regulations relating to a licence are being complied with.

Idem

(2) Where the Commissioner has reasonable and probable grounds to believe that any person is acting as a professional fund-raising corporation while not licensed, the Commissioner or any person designated by him in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 3.

Powers on
inspection

10.—(1) Upon an inspection under section 8 or 9, the person inspecting,

- (a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of the person being inspected that are relevant for the purposes of the inspection; and
- (b) may, upon giving a receipt therefor, remove any material referred to in clause *a* that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

(2) Any copy made as provided in subsection 1 and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original. Admissibility of copies

11. The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of his investigation to the Minister and, for the purposes of the investigation, the person making it has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such investigation as if it were an inquiry under that Act. Investigations by order of Minister

12.—(1) Where, upon a statement made under oath, the Director believes on reasonable and probable grounds that any person has, Investigation by Director

- (a) contravened any of the provisions of this Act or the regulations; or
- (b) committed an offence under the *Criminal Code* (Canada) or under the law of any jurisdiction that is relevant to his fitness for licensing under this Act, R.S.C. 1970, c. C-34

the Director may by order appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulation or the Commission of such an offence has occurred, and the person appointed shall report the result of his investigation to the Director.

Powers of
investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may,

- (a) upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, papers, documents and things relevant to the subject-matter of the investigation; and
- (b) inquire into negotiations, transactions, loans, borrowings made by or on behalf of or in relation to such person and into property, assets or things owned, acquired or alienated in whole or in part by him or any person acting on his behalf that are relevant to the subject-matter of the investigation,

1971, c. 49

and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under clause *a* of subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

Removal of
books, etc.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books,

papers, documents or things examined under clause *a* of subsection 2 or subsection 4 relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, papers or documents, but such copying shall be carried out with reasonable dispatch and the books, papers or documents in question shall be promptly thereafter returned to the person whose affairs are being investigated.

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents. ^{Admissibility of copies}

(7) The Minister or Director may appoint any expert to examine books, papers, documents or things examined under clause *a* of subsection 2 or under subsection 4. ^{Appointment of experts}

13.—(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 8, 9, 10, 11 or 12, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except, ^{Matters confidential}

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations. ^{Testimony in civil suit}

14. Where, upon the report of an investigation made under subsection 1 of section 13, it appears to the Director that a person may have, ^{Report}

- (a) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970,
c. C-34

- (b) committed an offence, under the *Criminal Code* (Canada) or under the law of any jurisdiction, that is relevant to his fitness for licensing under this Act,

the Director shall send a full and complete report of the investigation, including the report made to him, any transcript or evidence and any material in the possession of the Director relating thereto, to the Minister.

Order to
refrain from
dealing with
assets

15.—(1) Where,

- (a) an investigation of any person has been ordered under section 13; or
- (b) criminal proceedings or proceedings in relation to a contravention of any Act or regulation are about to be or have been instituted against a person that are connected with or arise out of the business in respect of which such person is registered,

the Director, if he believes it advisable for the protection of clients or customers of the person referred to in clause *a* or *b*, may, in writing or by telegram, direct any person having on deposit or under control or for safekeeping any assets or trust funds of the person referred to in clause *a* or *b* to hold such assets or trust funds or direct the person referred to in clause *a* or *b* to refrain from withdrawing any such assets or trust funds from any person having any of them on deposit or under control or for safekeeping or to hold such assets or any trust funds of clients, customers or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act* or the *Winding-up Act* (Canada), or until the Director revokes or the Tribunal cancels such direction or consents to the release of any particular assets or trust funds from the direction but, in the case of a bank, loan or trust company, the direction only applies to the office, branches or agencies thereof named in the direction.

R.S.O. 1970,
cc. 228, 89, 53
R.S.C. 1970,
cc. B-4, W-11

Bond in
lieu

(2) Subsection 1 does not apply where the person referred to in clause *a* or *b* of subsection 1 files with the Director,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of a guarantee company approved under *The Guarantee Companies Securities Act*; or
- (c) a bond of a guarantor, other than a guarantee company, accompanied by collateral security,

R.S.O. 1970,
c. 196

in such form, terms and amount as the Director determines.

(3) Any person in receipt of a direction given under sub-section 1, if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just.

REGULATION OF PROFESSIONAL FUND-RAISING CORPORATIONS

16.—(1) Every professional fund-raising corporation shall keep a record sheet in the prescribed form and proper books and accounts with respect to his business as a professional fund-raising corporation.

Books, etc.,
to be kept

(2) In addition to those records prescribed under subsection 1, every professional fund-raising corporation shall file with the Minister for each fund-raising event undertaken by the corporation a financial statement in the prescribed form showing the amount collected, the expenses of the campaign and the amount turned over to the non-profit organization for which the campaign was conducted.

17.—(1) Every professional fund-raising corporation shall maintain an account designated as a trust account in a chartered bank, loan or trust company or Province of Ontario Savings Office in which shall be deposited all moneys that come into its hands in trust for other persons in connection with its business, and it shall at all times keep such moneys separate and apart from moneys belonging to itself or to the partnership, in the case of a partnership, and shall disburse such moneys only in accordance with the terms of the trust.

Bank
account

(2) Where a professional fund-raising corporation holds moneys in trust for a period of one year after the person for whom it is held first became entitled to payment of the moneys and such person cannot be located, the professional fund-raising corporation shall pay the moneys to the Treasurer of Ontario who shall pay the moneys to the person appearing to the Treasurer to be entitled thereto.

Unclaimed
trust
moneys

18. Every professional fund-raising corporation shall be bonded in the form and manner as is prescribed in the regulations.

Bonding

19. No professional fund-raising corporation shall charge an amount towards overhead in relation to direct expenses greater than that amount prescribed in the regulations.

Overhead

Service **20.**—(1) Any notice or order required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Ministry.

Where service deemed to be made (2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date.

Exception (3) Notwithstanding subsections 1 and 2, the Tribunal may order any other method of service in respect of any matter before the Tribunal.

Restraining orders **21.**—(1) Where it appears to the Director that any person does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Director may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal (2) An appeal lies to the Supreme Court from an order made under subsection 1.

Offences **22.**—(1) Every person who, knowingly,

- (a) furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with any order, direction or other requirement made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on summary conviction is liable to a fine not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Corporations (2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.

(3) No proceedings under this section shall be instituted except with the consent of the Minister. ^{Consent of Minister}

(4) No proceeding under clause *a* of subsection 1 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director. ^{Limitation}

(5) No proceeding under clause *b* or *c* of subsection 1 shall be commenced more than two years after the time when the subject-matter of the proceeding arose. ^{Idem}

23. The Lieutenant Governor in Council may make regulations, ^{Regulations}

- (a) requiring and governing the books, accounts and records that shall be kept by licensed professional fund-raising corporations;
- (b) prescribing the form of financial statements to be filed under subsection 2 of section 16;
- (c) governing applications for a licence or renewal of a licence and prescribing terms and conditions of licences;
- (d) prescribing the fees payable upon applications for licences and renewal of licences and any other fees in connection with the administration of this Act and the regulations;
- (e) prescribing the practice and procedure upon investigations under sections 8 and 10;
- (f) prescribing forms and providing for their use;
- (g) prescribing further procedures respecting the conduct of matters coming before the Tribunal;
- (h) prescribing the form and manner in which a professional fund-raising corporation shall be bonded;
- (i) prescribing the amount which may be charged towards overhead in relation to direct expenses.

24. This Act comes into force on the day it receives Royal Assent. ^{Commencement}

25. This Act may be cited as *The Professional Fund-raising Corporations Control Act, 1973*. ^{Short title}

An Act to control
Professional Fund-raising Corporations

1st Reading

June 22nd, 1973

2nd Reading

3rd Reading

MR. NEWMAN
(Windsor-Walkerville)

(Private Member's Bill)

CA20N

XB

-B 56

BILL 183

Government
Publications

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act to establish the Ministry of Housing

THE HON. W. G. DAVIS
Premier



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

An Act to establish the Ministry of Housing

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) “Deputy Minister” means the Deputy Minister of Housing;

(b) “Minister” means the Minister of Housing;

(c) “Ministry” means the Ministry of Housing.

2. There shall be a ministry of the public service to be known as the Ministry of Housing.

Ministry
established

3. The Minister shall preside over and have charge of the Ministry.

Minister to
have charge

4. The Minister is responsible for the administration of this Act and any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council.

Duties of
Minister
of Housing

5.—(1) The Lieutenant Governor in Council shall appoint a Deputy Minister of Housing who shall be the deputy head of the Ministry.

Deputy
Minister
of Housing

(2) Such officers and employees as are required from time to time for the proper conduct of the business of the Ministry may be appointed under *The Public Service Act*.

Staff

R.S.O. 1970,
c. 386

(3) No action or other proceeding for damages shall be instituted against the Deputy Minister or any officer or employee of the Ministry or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

Protection
from
personal
liability

Liability
of Crown
R.S.O. 1970,
c. 365

(4) Subsection 3 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection 3 to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 3 had not been enacted.

Moneys
required by
Ministry

6. The expenditures of the Ministry for the fiscal year ending the 31st day of March, 1974, as approved by the Lieutenant Governor in Council, shall be paid out of the Consolidated Revenue Fund and thereafter the expenditures of the Ministry shall be paid out of the moneys appropriated therefor by the Legislature.

Objectives
of Minister

7. The Minister or the Deputy Minister, subject to the direction and control of the Minister, shall,

- (a) make appropriate recommendations to the Government of Ontario on policies and objectives on housing and related matters with regard to the short-term and long-term housing needs of the people of Ontario;
- (b) make recommendations for the effective co-ordination of all housing and related matters within the Government of Ontario, with a view to ensuring the consistent application of policy;
- (c) advise and otherwise assist the Government of Ontario in its dealings with other governments regarding housing and related matters; and
- (d) advise and otherwise assist local authorities and other persons involved in local planning and development of housing with regard to realizing the objectives of the Government of Ontario for housing and related matters.

Delegation
of powers
and duties

8. Where, under this or any other Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister, or to any officer or officers of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation.

Advisory
committees

9. Subject to the approval of the Lieutenant Governor in Council, the Minister may establish advisory committees to the Minister and sub-committees thereto, appoint chairmen and members of such committees and sub-committees, fix the

terms of reference of such committees and sub-committees and fix the remuneration and expenses of the chairmen and members of such committees and sub-committees.

10. The Minister after the close of each fiscal year shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

11. This Act comes into force on the day it receives Royal Assent.

12. This Act may be cited as *The Ministry of Housing Act, 1973*.

An Act to establish
the Ministry of Housing

1st Reading

October 2nd, 1973

2nd Reading

October 25th, 1973

3rd Reading

October 25th, 1973

THE HON. W. G. DAVIS
Premier

CA20N

XB

-B56

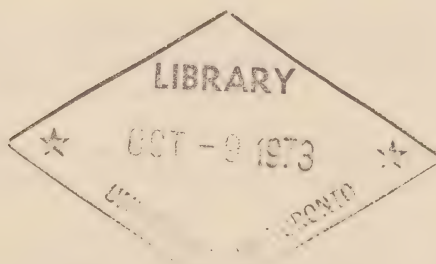
BILL 183

Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act to establish the Ministry of Housing

THE HON. W. G. DAVIS
Premier



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill establishes the Ministry of Housing and sets out the duties and objectives of the Minister of Housing.

BILL 183

1973

An Act to establish the Ministry of Housing

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
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- (a) "Deputy Minister" means the Deputy Minister of Housing;
- (b) "Minister" means the Minister of Housing;
- (c) "Ministry" means the Ministry of Housing.

2. There shall be a ministry of the public service to be known as the Ministry of Housing.

Ministry
established

3. The Minister shall preside over and have charge of the Ministry.

Minister to
have charge

4. The Minister is responsible for the administration of this Act and any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council.

Duties of
Minister
of Housing

5.—(1) The Lieutenant Governor in Council shall appoint a Deputy Minister of Housing who shall be the deputy head of the Ministry.

Deputy
Minister
of Housing

(2) Such officers and employees as are required from time to time for the proper conduct of the business of the Ministry may be appointed under *The Public Service Act*.

Staff

R.S.O. 1970,
c. 386

(3) No action or other proceeding for damages shall be instituted against the Deputy Minister or any officer or employee of the Ministry or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

Protection
from
personal
liability

Liability
of Crown
R.S.O. 1970,
c. 365

(4) Subsection 3 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection 3 to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 3 had not been enacted.

Moneys
required by
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6. The expenditures of the Ministry for the fiscal year ending the 31st day of March, 1974, as approved by the Lieutenant Governor in Council, shall be paid out of the Consolidated Revenue Fund and thereafter the expenditures of the Ministry shall be paid out of the moneys appropriated therefor by the Legislature.

Objectives
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7. The Minister or the Deputy Minister, subject to the direction and control of the Minister, shall,

- (a) make appropriate recommendations to the Government of Ontario on policies and objectives on housing and related matters with regard to the short-term and long-term housing needs of the people of Ontario;
- (b) make recommendations for the effective co-ordination of all housing and related matters within the Government of Ontario, with a view to ensuring the consistent application of policy;
- (c) advise and otherwise assist the Government of Ontario in its dealings with other governments regarding housing and related matters; and
- (d) advise and otherwise assist local authorities and other persons involved in local planning and development of housing with regard to realizing the objectives of the Government of Ontario for housing and related matters.

Delegation
of powers
and duties

8. Where, under this or any other Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister, or to any officer or officers of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation.

Advisory
committees

9. Subject to the approval of the Lieutenant Governor in Council, the Minister may establish advisory committees to the Minister and sub-committees thereto, appoint chairmen and members of such committees and sub-committees, fix the

terms of reference of such committees and sub-committees and fix the remuneration and expenses of the chairmen and members of such committees and sub-committees.

10. The Minister after the close of each year shall sub-^{Annual report}mit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

11. This Act comes into force on the day it receives Royal^{Commence-}Assent.^{ment}

12. This Act may be cited as *The Ministry of Housing*^{Short title}*Act, 1973.*

An Act to establish
the Ministry of Housing

1st Reading

October 2nd, 1973

2nd Reading

3rd Reading

THE HON. W. G. DAVIS
Premier

(Government Bill)

CA20N
XB

BILL 183

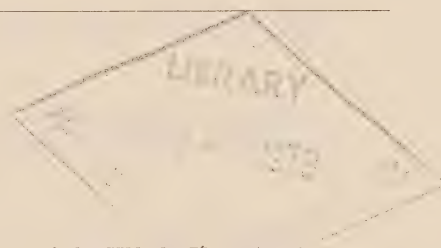
Government Bill

-B 56

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act to establish the Ministry of Housing

THE HON. W. G. DAVIS
Premier



(Reprinted as amended by the Committee of the Whole House)

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

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1973

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R.S.O. 1970,
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10. The Minister after the close of each fiscal year shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

11. This Act comes into force on the day it receives Royal Assent.

12. This Act may be cited as *The Ministry of Housing Act, 1973*.

BILL 183

An Act to establish
the Ministry of Housing

1st Reading

October 2nd, 1973

2nd Reading

October 25th, 1973

3rd Reading

THE HON. W. G. DAVIS
Premier

*(Reprinted as amended by the
Committee of the Whole House)*

CA20N

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BILL 184

Government
Publications

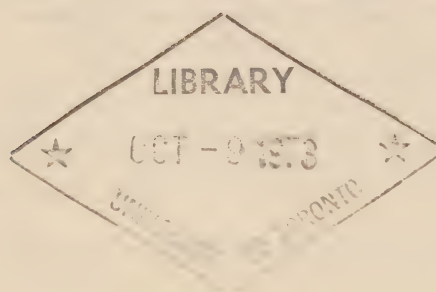
Government Bill

-B56

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act to amend The Condominium Act

THE HON. J. T. CLEMENT
Minister of Consumer and Commercial Relations



EXPLANATORY NOTES

SECTION 1. The amendment defines declarant as used in sections 5 and 8 of the Bill.

SECTION 2. The amended subsection clarifies and limits the class of persons who must consent to the registration of the declaration and description.

The new subsection allows the corporation to change its address for service by registering a notice in the prescribed form. Previously the corporation could only change its address for service by amending the declaration, thus requiring the consent of all owners and all persons having registered encumbrances against the units and common elements.

SECTION 3. The amendments update the section to accord with 1972 amendments to *The Land Titles Act* and *The Registry Act*.

An Act to amend The Condominium Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Condominium Act*, being Chapter 77 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clause:

(ha) "declarant" means the owner or owners in fee simple of the land described in the description at the time of the registration of a declaration and description of the land, and includes any successor or assignee of such owner or owners other than a *bona fide* purchaser of a unit who actually pays fair market value.
- 2.—(1) Clause *b* of subsection 1 of section 3 of the said Act is repealed and the following substituted therefor:

(b) the consent, in the prescribed form, of every person having a registered charge, mortgage, lien, or other claim securing the payment of money against the land or interests appurtenant to the land described in the description, but nothing herein shall be deemed to require the consent of a municipality having a registered agreement with the owner of the land described in the description or with any predecessor in title of the owner.
- (2) The said section 3 is amended by adding thereto the following subsection:

(5) Notwithstanding subsections 3 and 4, the corporation may change its address for service by registering a notice in the prescribed form.
- 3.—(1) Subsection 1 of section 5 of the said Act is amended by striking out "Every master of titles and every registrar of deeds" in the first line and inserting in lieu thereof "Every land registrar".

s. 5 (3),
amended

- (2) Subsection 3 of the said section 5 is amended by striking out "Every master of titles and every registrar of deeds" in the first line and inserting in lieu thereof "Every land registrar".

s. 8a,
enacted

4. The said Act is amended by adding thereto the following section :

Easements
and leases
of common
elements

8a.—(1) The corporation may,

- (a) lease, for a term not exceeding two years, any part of the common elements except any part that the declaration specifies are to be used by the owners of one or more designated units and not by all the owners; and
- (b) grant or transfer an easement for the provision of any service through the common elements.

Binding on
all owners

- (2) A lease or a grant or transfer of an easement mentioned in subsection 1 shall be signed by the authorized officers of the corporation under its seal and, when so executed, affects the interest of every owner in the common elements as if the agreement had been executed by him.

s. 9 (2),
re-enacted

- 5.—(1) Subsection 2 of section 9 of the said Act is repealed and the following substituted therefor :

Name of
corporation

- (2) The land registrar shall assign a name to each corporation or proposed corporation in accordance with the regulations.

s. 9,
amended

- (2) The said section 9 is amended by adding thereto the following subsections :

Annual
meetings

- (4a) A corporation shall hold an annual meeting of the members not more than three months after the registration of the declaration and description, and subsequently not more than fifteen months after the holding of the last preceding annual meeting, and at such meeting any member of the corporation or any mortgagee or chargee entitled to vote shall have an opportunity to raise any matter relevant to the affairs and business of the corporation.

Other
meetings

- (4b) The board may at any time call a meeting of the members of the corporation for the transaction of any business, the nature of which shall be specified in the notice calling the meeting.

Requisition
for members'
meeting

- (4c) The board shall, upon receipt of a requisition in writing made by members of the corporation who together own at least 25 per cent of the common elements, call and hold a meeting

SECTION 4. The new section allows the corporation, on behalf of every owner, to grant easements for the provision of services through the common elements and to lease any part of the common elements other than those parts designated as limited common elements.

SECTION 5. The new subsection 2 provides authority for the land registrar to assign a name to a corporation prior to the registration of the declaration and description. The other new subsections provide for compulsory annual meetings, the giving of notice of such meetings and a record date for the giving of such notice. They also provide for the termination of the board of directors who are elected at a time when the developer is the owner of a majority of the units, and the election of a new board. They additionally deal with other meetings and allow for a stipulated percentage of the members of the corporation to compel the board to call a meeting.

SECTION 6. The new provision provides that management contracts will not exceed two years.

SECTION 7. The new section allows the corporation, or any unit owner, mortgagee or chargee to examine the records of every person in receipt of money for the payment of common expenses with respect to the disposition of such money. The section additionally allows the corporation or any unit owner or mortgagee or chargee to apply to the court for an investigation or audit of that person and requires that all such money be held as trust money in an approved banking depository.

of the members of the corporation and if the meeting is not called and held within thirty days of receipt of the requisition, any of the requisitionists may call the meeting, and in such case, the meeting shall be held within sixty days of receipt of the requisition.

(4d) The requisition shall state the general nature of the business to be presented at the meeting, and shall be signed by the requisitionists and deposited at the address for service of the corporation. ^{Requisition}

(4e) At least ten days written notice of every meeting of the members of the corporation specifying the place, the date and the hour thereof shall be given to each member personally, or by prepaid mail addressed to him at his unit, and to each mortgagee or chargee entitled to vote, by prepaid mail addressed to him at the address provided under subsection 2 of section 22. ^{Notice}

(4f) Members of the corporation and mortgagees or chargees entitled to vote on the day next preceding the day on which notice is given or sent are entitled to notice under subsection 4e. ^{Record date}

(6a) Notwithstanding subsection 6, the board elected at a time when the declarant owns a majority of the units shall, not more than twenty-one days after the declarant ceases to be the registered owner of a majority of the units, call a meeting of the members of the corporation, to elect a new board of directors, and such meeting shall be held within fourteen days after the calling of the meeting, except as otherwise agreed upon by all the members of the corporation, and all mortgagees and chargees entitled to vote. ^{Election of new board}

(6b) If the meeting referred to in subsection 6a is not called within the time provided for by that subsection, any member of the corporation, or any mortgagee or chargee entitled to vote may call the meeting. ^{Member, etc., may call meeting}

6. The said Act is further amended by adding thereto the following section: ^{s. 15a, enacted}

MANAGEMENT AGREEMENT

15a. The corporation shall not enter into an agreement with any person for the management of the property for a term exceeding two years. ^{Management contract}

7. The said Act is further amended by adding thereto the following section: ^{s. 15b, enacted}

INVESTIGATION OF RECORDS

Examination
of records

15b.—(1) Every person in receipt of money paid by or on behalf of an owner for the payment of common expenses shall, upon reasonable notice, make available for examination by the corporation or any owner, mortgagee or chargee, all records relating to the disposition of such money.

Application
to court

(2) Upon application to the county or district court by the corporation or any owner, mortgagee or chargee, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the best interests of the applicant to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as the court considers proper, appointing an inspector to investigate the affairs of any person in receipt of money mentioned in subsection 1 and to audit the accounts and records of such person.

Powers of
inspector
1971, c. 49

(3) An inspector appointed under subsection 2 has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such investigation or audit as if it were an inquiry under that Act.

Trust
money

(4) All money received for the payment of common expenses shall be held by the person in receipt thereof in trust for the performance of the duties and obligations in respect of which the money is paid, and the money shall be paid into an account at a chartered bank or trust company or a loan company authorized by law to receive money on deposit or a Province of Ontario Savings Office and such account shall be designated as a trust account.

s. 15c,
enacted

8. The said Act is further amended by adding thereto the following section:

LEASES

No leasing
prior to
registration

15c.—(1) A lease of a proposed unit shall not be entered into prior to the registration of the declaration and description unless the lessee has entered into a *bona fide* agreement to purchase the unit.

Leases after
registration
of declaration

(2) Where the declarant intends to enter into any lease for any unit for a term expiring on a day more than two years after the registration of the declaration and description, he shall give written notice of such intention by prepaid mail to every member of the corporation, and every mortgagee and chargee entitled to vote and shall not lease or agree to lease the unit until the period referred to in subsection 3 has expired or, where an application is made under subsection 3, it is finally disposed of.

SECTION 8. The new section limits the developers right to lease a unit both before and after the registration of the declaration and description.

SECTION 9. The new subsection provides that a mortgagee or chargee having authority to exercise the right of the owner to vote or to consent must notify the corporation of that authority and furnish the corporation with an address for service in order to be entitled to such rights.

SECTION 10. The amendment allows applications to be made to the county or district court rather than the Supreme Court.

SECTION 11. The new provision provides that any money received by a condominium developer on the sale of a unit is trust money and is to be held in approved banking depositories until completion of registration of the condominium corporation.

(3) Any person notified under subsection 2 may, within ^{Application to court} twenty-one days after receiving the notice, apply by summary application to a judge of a county or district court, and the judge, if he is of the opinion that the declarant has not used his best efforts to sell the units, may by order prohibit the declarant from leasing the unit or grant such other relief as he considers proper.

(4) No lease by a declarant shall be for a term of more than ^{Term of lease} four years.

9. Section 22 of the said Act is amended by adding thereto the ^{s. 22, amended} following subsection:

(2) A mortgagee or chargee having authority to exercise ^{Address for service} the right of the owner to vote or consent shall, in order to be entitled to exercise such right, notify the corporation of that authority and furnish the corporation with an address for service.

10. Subsection 1 of section 23 of the said Act is amended by striking ^{s. 23 (1), amended} out "Supreme Court" in the fourth line and inserting in lieu thereof "county or district court".

11. The said Act is further amended by adding thereto the following ^{s. 24a, enacted} section:

24a.—(1) All money received by any person on account ^{Trust money} of a sale or an agreement for sale of a proposed unit prior to the registration of the declaration and description shall be held in trust by that person for the carrying out of the sale or agreement for sale and such money shall forthwith be paid into an account at a chartered bank or trust company or loan company authorized by law to receive money on deposit or a Province of Ontario Savings Office to be kept in the name of that person and such account shall be designated as a trust account.

(2) A separate trust account shall be kept for the money ^{Trust account} received in respect of each proposed condominium property.

(3) Upon the registration of the declaration and the ^{Application of subs. 1} description, subsection 1 ceases to apply to the money referred to therein.

(4) Every person who, prior to the registration of the ^{Interest} declaration and description, has paid money on account of a sale or an agreement for sale of a proposed unit is entitled to receive, from the person mentioned in subsection 1, interest on that money at a rate to be prescribed from the time of payment to the time the declaration and description are registered.

Offence

(5) Every person who fails to comply with this section is guilty of an offence and on summary conviction is liable to a fine of,

- (a) not more than \$25,000, where the person is a corporation; or
- (b) not more than \$2,000, where the person is other than a corporation.

s. 24b,
enacted

12. The said Act is further amended by adding thereto the following section:

Implied
covenants in
agreement of
purchase and
sale

24b.—(1) In an agreement of purchase and sale of a proposed unit, there shall be implied on behalf of the vendor,

- (a) a covenant to take all reasonable steps to register a declaration and description in respect of the property in which the unit is included without delay; and
- (b) a covenant to take all reasonable steps to sell the other units included in the property without delay.

Failure to
register the
declaration
within a
specified
period

(2) Notwithstanding any provision to the contrary contained therein, an agreement of purchase and sale of a proposed unit shall not be terminated by the vendor only by reason of the failure to register the declaration and description within a period of time specified in the agreement, even though the failure to register is caused by circumstances beyond the control of the vendor.

Rent money

(3) Where an agreement of purchase and sale of a proposed unit permits or requires the purchaser to occupy the unit before a deed or transfer of the unit to him is registered, the money payable in respect of such right or obligation shall, unless the agreement states that the money is payable as rent, be credited as payments of the purchase price.

s. 25 (1),
amended

13. Subsection 1 of section 25 of the said Act is amended by adding thereto the following clauses:

- (ja) governing the collection of money intended for the payment of common expenses;
- (jb) governing the application of money collected for the payment of common expenses;
- (jc) prescribing rates of interest on money held in trust.

SECTION 12. The new section implies certain covenants in agreements of purchase and sale of proposed units. It also protects purchasers of units where the declaration and description are not registered within a period of time specified in the agreement of purchase and sale and where the purchaser is required or permitted to occupy the unit before the declaration and description are registered.

SECTION 13. Self-explanatory.

14.—(1) This Act, except sections 2, 8, 11 and 12, comes into force on the day it receives Royal Assent. <sup>Commence-
ment</sup>

(2) Sections 2, 8, 11 and 12 come into force on a day to be ^{Idem} named by the Lieutenant Governor by his proclamation.

15. This act may be cited as *The Condominium Amendment Act, 1973*. ^{Short Title}

An Act to amend
The Condominium Act

1st Reading

October 2nd, 1973

2nd Reading

3rd Reading

THE HON. J. T. CLEMENT
Minister of Consumer and
Commercial Relations

(Government Bill)

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BILL 185

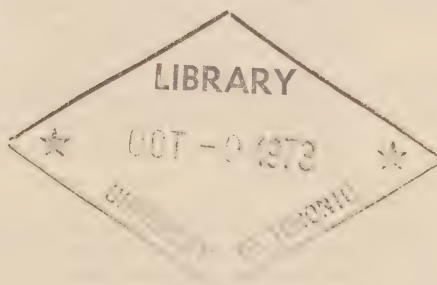
Publication

Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

The Co-operative Corporations Act, 1973

THE HON. J. T. CLEMENT
Minister of Consumer and Commercial Relations



TORONTO

PRINTED AND PUBLISHED BY THE QUEEN'S PRINTER AND PUBLISHER

EXPLANATORY NOTE

The purpose of this Bill is to provide a self-contained, comprehensive and exclusive code of the corporate law applicable to co-operatives. This Bill deals with the incorporation, operation, management and dissolution of co-operatives both with and without share capital in the light of recommendations made by the 1971 Report on Co-operatives by the Select Committee on Company Law.

Among the major provisions of the Bill are the following:

1. Provision is made for the appointment of a Director of Co-Operative Services responsible for administering the legislation affecting co-operatives. (Section 2).
2. Procedure for the incorporation of a co-operative is substantially the same as that under *The Business Corporations Act*. Incorporation of a co-operative is made a matter of right. (Sections 4, 5 and 6).
3. The use of the word "co-operative" or its abbreviation by a partnership, organization, society or association is prohibited. (Section 7(3)).
4. The present legislation requiring by-laws of a co-operative to be filed with the provincial authority is eliminated. Co-operatives will continue to file their financial statements in an office of public record. (Section 141).
5. A co-operative may be required to furnish information to the Director of Co-operative Services upon his request. (Section 142.).
6. A co-operative is required to conduct a minimum of 50 per cent of its business with its members, calculated on a three year running average. The Minister may, after a hearing, order the conversion of a co-operative into a business corporation if the co-operative fails to transact the minimum amount of member business. (Section 144).
7. The Minister is empowered on his own initiative, and required upon the request of 10 per cent of the members, to investigate the affairs of a co-operative. If it is determined that the affairs of the co-operative are not being conducted in accordance with the Act, the Minister is empowered to commence proceedings for the winding up of the co-operative, to cancel its certificate of incorporation or to refer the report of the inspection to the Attorney General. (Section 148).
8. Admission to membership in a co-operative is made a matter for action by the board of directors. The Act contains no statement or provision on the matter of open membership. (Section 61(2)).
9. The transfer of membership is required to be approved by the board of directors. (Sections 40 and 62).
10. Provision is made for the withdrawal by a member from the co-operative. The member may elect to leave all or part of his investment in the co-operative or may require the co-operative to repay his investment. The co-operative is required to repay that investment, except term loans, within six months. In certain circumstances the period for repayment may be extended over a period of not more than five years. (Section 64).

11. A co-operative may expel a member by resolution of the board of directors where that member is given notice of a hearing, the grounds upon which it is sought to expel him and the right to appear at that meeting. A person expelled is given the right to appeal to the membership of the co-operative at the next annual or general meeting. An expelled member's investment must be repaid by the co-operative within one year of expulsion. (Section 66).
12. No change is made in the principle of one member, one vote. Voting by proxy continues to be prohibited. No change is made in respect of delegate voting. (Sections 76 and 24).
13. No limit is imposed on the size of a member's investment in the co-operative.
14. Persons of the age of sixteen years may be admitted as members of the co-operative and for purposes of contracts with the co-operative, become *sui juris*. (Section 63).
15. The minimum number of members of a co-operative is set at five. (Sections 5(1) and 145).
16. Provisions drawn from *The Business Corporations Act* dealing with representative actions on behalf of the co-operative, requisitions of by-laws or resolutions, circulation of members' resolutions, requisition for members' meeting and requisition of members' meeting by court order are introduced. (Sections 66, 70, 71, 79 and 80).
17. Dividends payable by a co-operative with share capital are limited to 8 per cent. The interest rate payable on loans by a co-operative without share capital is fixed at 8 per cent. This same limit applies to the interest rate on compulsory loans of patronage returns. (Sections 54, 58(2), 49(1) and 56(4)).
18. The interest rate payable on loans, not representing loans made as a condition of membership or compulsory investment, is not limited. (Section 49(2)).
19. The role of the board of directors is defined as to manage or supervise the affairs of the co-operative. The minimum number of directors is fixed at five. A majority of these must be resident Canadians as defined. (Sections 96(1), 85(2) and 85(3)).
20. Co-operatives which are now in existence are given a period of two years during which to bring the number of their directors to five. (Section 88(2)).
21. A director must be a member of the co-operative at the time of his election and throughout his term of office. A person who is a director, officer or shareholder of a corporate member of the co-operative may also be a director of that co-operative. The co-operative may enact a by-law to require directors to conduct a minimum annual volume of business with the co-operative. (Sections 87 and 21 (d)).
22. Cumulative voting for directors is not permitted. (Section 91).
23. The standard of care, diligence and skill imposed on directors and officers of a co-operative is the same as that imposed upon directors and officers of a business corporation by section 144 of *The Business Corporations Act*. (Section 108).
24. The disclosure of interest in contracts by directors of a co-operative is of the same as that required of directors of a business corporation.

- A director of a co-operative is not required to disclose his interest in a contract that is of a type available to all members of the co-operative. (Section 98).
25. Insiders of a co-operative are not required to file insider trading reports. However, insiders are liable to compensate any person for any direct loss suffered by such a person as a result of an insider transaction. (Section 111).
 26. A director is subject to removal before the expiry of his term by resolution passed by a majority of the members at a general meeting. (Section 104).
 27. Subject to a solvency test, a co-operative may repurchase its issued shares. The shares may be cancelled by the board of directors at the time of purchase or held for resale. (Section 32).
 28. Provisions substantially the same as those of *The Business Corporations Act* dealing with the appointment of auditors and the annual audit are introduced. Persons related or associated with the auditor of a co-operative may not be appointed as receiver or trustee in bankruptcy for the co-operative. (Sections 124 and 126).
 29. Directors are empowered but not required to elect an audit committee. If an audit committee is not elected, the auditor is entitled to receive notice of and to attend meetings of directors at which the financial statements are to be approved and upon the request of the auditor the co-operative shall convene a meeting of directors to consider any matters the auditor wishes to bring to their attention. (Sections 138 and 139(2)).
 30. Unless a co-operative has fifteen or fewer members, capital not exceeding \$15,000, assets not exceeding \$50,000 or sales not exceeding \$100,000 and unless all members consent in writing, the co-operative must have its financial statements audited. (Section 123).
 31. The financial disclosure requirements applicable to co-operatives with and without share capital are parallel. The reporting requirements are as much as possible the same as for a business corporation. Certain amendments to the present financial disclosure requirements are made for patronage returns and member loans. The financial statements must contain a note referring to the percentage of non-member business transacted during the year. (Sections 127 to 137).
 32. Where a co-operative has more than fifteen members, before it may issue any securities, the co-operative must file and obtain a receipt for an offering statement. This offering statement must provide full, true and plain disclosure of all material facts relating to the securities proposed to be issued. Notice is required to be given of any material change. This offering statement is open to inspection by the public at the office of the Ministry and must be made available at the head office of the co-operative during normal business hours. The material to be disclosed by this offering statement will be set out in regulations. (Sections 34 to 38).
 33. Where the co-operative is authorized to do so by resolution of the board of directors and where it is necessary to enable the co-operative to improve its services to its members, the co-operative may acquire and hold securities in any other corporation having objects in whole or in part similar to those of the co-operative. (Section 15(2) par. 5).

34. While no special provision is made for direct charge co-operatives, they are exempted from the general provisions relating to distribution of net surplus. (Sections 1(1) par. 10 and 55(1)).
35. Where a co-operative by operation of a compulsory marketing plan is prevented from allocating patronage returns to members, provision is made to deem deliveries made by members to the marketing board to have been made to the co-operative. Where a marketing plan otherwise operates to deprive a co-operative of its ability to deal directly with its members, the Minister may upon application by the co-operative convert it to a business corporation. (Sections 55(5) and 143).
36. A co-operative, where empowered by by-law, may make percentage deductions according to volume from amounts due to members from the marketing of their produce through the co-operative, and retain this money as compulsory loans to the co-operatives upon such terms as the by-law provides. The maximum rate of interest on these compulsory loans is set at 8 per cent. (Section 57).
37. The minimum par value of co-operative shares is reduced from \$5.00 to \$1.00. (Section 25(2)).
38. Co-operative loan and share certificates must set out the co-operative name and the words "a co-operative incorporated under the law of the Province of Ontario". The words "Transfer of these shares is restricted" must be noted conspicuously on the certificate. (Section 46).
39. Co-operatives may dissolve by filing articles of dissolution. The sections of *The Business Corporations Act* dealing with winding up are made applicable to the winding up of co-operatives. (Sections 161 to 165).
40. Non-conforming provisions in the letters patent and by-laws of co-operatives now in existence continue to be valid for 3 years after the coming into force of this Bill. (Section 187).

BILL 185

1973

The Co-operative Corporations Act, 1973

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

1. “articles of incorporation” or “articles” means the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which a co-operative is incorporated, and includes any amendments thereto;
2. “authorized capital” means the authorized capital as determined under section 25;
3. “certificate of incorporation” includes letters patent, a special Act or any other instrument by which a co-operative is incorporated;
4. “certified copy” means,
 - i. in relation to a document of a co-operative, a copy of the document certified to be a true copy under the seal of the co-operative and signed by an officer thereof,
 - ii. in relation to a document issued by a court, a copy of the document certified to be a true copy under the seal of the court and signed by the registrar or clerk thereof,
 - iii. in relation to a document in the custody of the Ministry, a copy of the document certified to be a true copy under the seal of the

Minister and signed by the Minister or by such officer of the Ministry as is designated by the regulations;

5. "co-operative" means a corporation carrying on an enterprise on a co-operative basis and to which this Act applies;
6. "co-operative basis" means organized, operated and administered upon the following principles and methods,
 - i. each member or delegate has only one vote,
 - ii. no member or delegate may vote by proxy,
 - iii. interest on loan capital and dividends on share capital are limited to a percentage fixed by this Act or the articles of incorporation, and
 - iv. the enterprise of the corporation is operated as nearly as possible at cost after providing for reasonable reserves and the payment or crediting of interest on loan capital or dividends on share capital; and any surplus funds arising from the business of the organization, after providing for such reasonable reserves and interest or dividends, unless used to maintain or improve services of the organization for its members or donated for community welfare or the propagation of co-operative principles, are distributed in whole or in part among the members in proportion to the volume of business they have done with or through the organization;
7. "corporation" means a corporation with or without share capital whether or not it is a co-operative to which this Act applies;
8. "court" means the Supreme Court of Ontario presided over by one of those judges of the High Court who are designated by the Chief Justice of the High Court for the purpose of hearing applications under this Act;
9. "debt obligation" means a bond, debenture, note or other similar obligation of a corporation, whether secured or unsecured;

10. "direct charge co-operative" means a co-operative that deals with its members and prospective members only in products or services on a cost basis and that directly charges its members a fee to cover the operating expenses of the co-operative;
11. "financial statement" means a financial statement referred to in section 128;
12. "issued capital" means the issued capital as determined under section 29;
13. "member" means a person who is a member of a co-operative pursuant to the provisions of this Act or the articles and by-laws of the co-operative governing membership;
14. "Minister" means the Minister of Consumer and Commercial Relations or such other member of the Executive Council to whom the administration of this Act may be assigned;
15. "Ministry" means the Ministry of the Minister;
16. "officer" means the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager, or any other person designated an officer by by-law or by resolution of the directors or any other individual who performs functions for the co-operative similar to those normally performed by an individual occupying any such office;
17. "personal representative", where used with reference to the holding of shares or loans or the exercise of a member's rights in that capacity, means in the capacity of an executor, administrator, guardian, tutor, trustee, receiver or liquidator of the member, shareholder or lender or the committee of or curator to the member, shareholder or lender who is a mentally incompetent person;
18. "prescribed" means prescribed by the regulations;
19. "regulations" means the regulations made under this Act;
20. "related person", where used to indicate a relationship with any person, means,

- i. any spouse, son or daughter of that person, or
 - ii. any relative of such person or of his spouse, other than a relative referred to in subparagraph i, who has the same home as such person;
21. "resident Canadian" means a Canadian citizen or person lawfully admitted to Canada for permanent residence, who is ordinarily resident in Canada;
22. "security" means any share of any class of shares or any debt obligation of a corporation;
23. "senior officer" means,
- i. the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a co-operative or any other individual who performs functions for the co-operative similar to those normally performed by an individual occupying any such office, and
 - ii. each of the five highest paid employees of a co-operative, including any individual referred to in subparagraph i;
24. "special resolution" means a resolution that is not effective until it is,
- i. passed by the directors of a co-operative, and
 - ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the members of the co-operative duly called for that purpose, or such greater proportion of the votes cast as the articles provide;
25. "term loan" means a loan having a fixed date of maturity and includes member and patronage loans having a fixed date of maturity.

Interpre-
tation:
subsidiary

(2) For the purposes of this Act, a corporation shall be deemed to be a subsidiary of a co-operative if, but only if, it is controlled by that co-operative.

Holding
co-operative

(3) For the purposes of this Act, a co-operative shall be deemed to be a corporation's holding co-operative if, but only if, that corporation is its subsidiary.

Control

(4) For the purposes of this Act, a subsidiary shall be deemed to be controlled by one or more other corporations if, but only if,

- (a) shares of the subsidiary carrying more than 50 per cent of the votes for the election of directors are held, other than by way of security only, by or for the benefit of such one or more other corporations; and
- (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the subsidiary.

(5) For the purposes of this Act, a co-operative is insolvent^{Insolvency} if its liabilities exceed the realizable value of its assets or if the co-operative is unable to pay its debts as they become due.

(6) In determining the number of members of a co-operative^{Number of members} for the purposes of this Act, two or more persons holding the same share or shares jointly shall be counted as one member.

2. The Minister may delegate in writing any of his duties<sup>Adminis-
tration</sup> or powers under this Act to any public servant in the Ministry.

3. This Act, except where it is otherwise expressly pro-^{Application}vided, applies,

- (a) to every corporation incorporated as a co-operative by or under a general or special Act of the Parliament of the former Province of Upper Canada;
- (b) to every corporation incorporated as a co-operative by or under a general or special Act of the Parliament of the former Province of Canada that has its head office and carries on business in Ontario and that was incorporated with objects to which the authority of the Legislature extends; and
- (c) to every corporation incorporated as a co-operative by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation to which *The R.S.O. 1970, c. 96*
Credit Unions Act applies.

INCORPORATION

4.—(1) A co-operative may be incorporated under this^{Incorporation} Act for any lawful objects to which the authority of the Legislature extends, except those of a corporation the incorporation of which is provided for in any other Act.

(2) Where the practice of a profession is governed by an^{Professions} Act, a co-operative may be incorporated to practise the profession only if such Act expressly permits the practice of the profession by a corporation and subject to the provisions of such Act.

Articles of
incorporation

5.—(1) Five or more persons, being corporations or natural persons who are of the age of eighteen years or more, may incorporate a co-operative with or without share capital by signing and delivering to the Minister in duplicate articles of incorporation.

Contents of
articles

(2) Subject to subsection 3, articles of incorporation shall set out the following particulars:

1. The name of the co-operative to be incorporated.
2. The objects for which the co-operative is to be incorporated.
3. The place in Ontario where the head office of the co-operative is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district and the address giving the street and number, if any.
4. The number of directors of the co-operative and the names in full and the residence addresses, giving the street and number, if any, of each person who is to be a first director of the co-operative.
5. The name in full, and the residence address, giving the street and number, if any, of each of the incorporators.

Idem

(3) In addition to the particulars required to be set out in subsection 2, articles of incorporation shall state,

- (a) where there is to be share capital,
 - (i) the authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares of each class and the par value of each share,
 - (ii) where there are to be preference shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to them or each class of them,
 - (iii) the restrictions to be placed on the transfer of its shares or any class thereof, and
 - (iv) the class and number of shares to be taken by each incorporator and the amount to be paid therefor;

(b) where there is to be no share capital,

- (i) the amount of the membership fee,
- (ii) the authorized loan capital,
- (iii) the restrictions to be placed on the transfer of member loans,
- (iv) the classes of membership, if any, setting forth the designation of and the terms and conditions attaching to each class of membership, and
- (v) the amount of a minimum member loan, if any,

and any other matter required by this Act or the regulations to be set out in the articles.

(4) The articles may set out any provision that is authorized ^{Idem} by this Act to be set out in the articles or that could be the subject of a by-law of the co-operative.

(5) Where the articles name as a first director a person who is not an incorporator, the articles shall have attached thereto his written and signed consent to act as a first director. ^{Consent of first director}

(6) The signature of each incorporator and of each first ^{Affidavits} director and the fact that each incorporator who is a natural person and each first director is of the age of eighteen years or more shall be verified by affidavit.

6.—(1) If the articles conform to law and the approval of ^{Certificate of incorporation} any person or body required by statute to approve the incorporation has been given, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the incorporators or their agent a certificate of incorporation to which he shall affix the other duplicate.

(2) A co-operative comes into existence upon the date set ^{Idem} forth in its certificate of incorporation.

Idem (3) A certificate of incorporation is conclusive proof that all conditions precedent required to be performed by the incorporators have been complied with and that the co-operative has been incorporated under this Act, except in a proceeding under section 166 to cancel the certificate for cause.

NAME

Use of co-operative **7.—**(1) The corporate name of a co-operative shall include the word “co-operative” as part thereof.

Idem (2) Where a co-operative or any director, officer, employee or member uses the name of the co-operative, the word “co-operative” may be abbreviated to “co-op”.

Idem (3) No corporation, association, partnership or individual not being a co-operative to which this Act applies shall use in Ontario a name that includes the word “co-operative” or any abbreviation or derivation thereof whether or not the word, abbreviation or derivation is used in or in connection with the name.

Idem (4) Subsection 3 does not apply to a corporation incorporated by or under the authority of the Parliament of Canada, to a corporation granted an extra-provincial licence, to a corporation incorporated under the laws of Ontario before the 12th day of April, 1917, or to a corporation to which *The Credit Unions Act* applies.

R.S.O. 1970,
c. 96

Use of “Incorporated”, “Corporation” (5) Subject to subsection 6, the name of a co-operative shall have the word “Incorporated” or “Corporation” or its corresponding abbreviation “Inc.” or “Corp.” as the last word thereof.

Use of “Limited” (6) Where a co-operative has share capital, the name of the co-operative may have the word “Limited” or its abbreviation “Ltd.” as the last word thereof.

Use of name **8.** Notwithstanding section 7, a co-operative may use its name in such form and in such language as the articles provide and as the Minister approves.

Co-operative name **9.—**(1) The name of a co-operative shall not,

- (a) be the same as or similar to the name of a known corporation, association, partnership or individual whether in existence or not if its use would be likely to deceive, except where the corporation, association, partnership or individual signifies its or his consent in writing to the use of the name in whole or in part, and, if required by the Minister,

- (i) in the case of a corporation, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles or amendment by which the name is acquired, or
- (ii) in the case of an association, partnership or individual, undertakes to cease to carry on its or his business or activities, or change its or his name to a dissimilar name, within six months after the filing of the articles or amendment by which the name is acquired;
- (b) suggest or imply a connection with the Crown or the Government of Canada or the government of a municipality or any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government or municipality without the consent in writing of the appropriate authority;
- (c) suggest or imply a connection with a political party or a leader of a political party;
- (d) contain any word or phrase that indicates or implies that it is incorporated for any object other than one or more of the objects set out in its articles;
- (e) contain any word or phrase or any abbreviation or derivation thereof, the use of which is prohibited or restricted under any other Act unless in the latter case the restrictions are complied with; or
- (f) in the opinion of the Minister, be objectionable on any public grounds.

(2) If a co-operative through inadvertence or otherwise has acquired a name contrary to subsection 1, the Minister may, after he has given the co-operative an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly. Change of name if objectionable

(3) Where an undertaking referred to in clause *a* of subsection 1 is given by a co-operative and the undertaking is not carried out within the time specified, the Minister may, after giving the co-operative an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly. Failure to perform undertaking

Idem (4) Where an undertaking referred to in clause *a* of subsection 1 is given by a corporation to which this Act does not apply or by an association, partnership or individual and the undertaking is not carried out within the time specified, the Minister may, after giving the co-operative that acquired the name by virtue of such undertaking an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate, the articles are amended accordingly.

Change not to affect rights, etc. **10.** A change in the name of a co-operative does not affect its rights or obligations.

Unauthorized use of "Limited", etc. **11.** Where a co-operative carries on business or identifies itself to the public in a name or style other than as provided in the articles, such name or style shall not include the word "Limited", "Incorporated" or "Corporation" or any abbreviation thereof.

Reservation of name **12.—(1)** Any person may, on application in writing and on the payment of the prescribed fee, reserve a corporate name for the use and benefit of the applicant or his nominee for a period of ninety days or such lesser period as he specifies, if the name is at the time not contrary to section 9.

Idem (2) During the period for which the name has been reserved, no corporation shall acquire the name or a similar name without the consent in writing of the person for whose use and benefit the name has been reserved.

SEAL AND HEAD OFFICE

Corporate seal **13.—(1)** A co-operative shall have a seal which shall be adopted and may be changed by resolution of the directors.

Idem (2) The name of the co-operative shall appear in legible characters on the seal.

Head office **14.—(1)** Subject to subsection 2, a co-operative shall at all times have its head office at the place in Ontario where the articles provide that the head office is to be located.

Change of head office (2) A co-operative may by by-law change the municipality or geographic township in which its head office is located to another place in Ontario.

Where municipality annexed or amalgamated (3) Where the location of the head office of a co-operative is changed by reason only of the annexation or amalgamation of the place in which the head office is located

to or with another municipality, such change does not constitute and has never constituted a change within the meaning of subsection 2.

(4) The co-operative shall, within ten days after a by-law^{Filing of by-law} passed under subsection 2 has been confirmed by the members, file a certified copy of the by-law with the Minister.

(5) A co-operative may by resolution of the directors change^{Change of street address} the location of its head office within a municipality or geographic township and shall, within ten days after the passing of the resolution, file with the Minister notice of the change giving the address including the street and number, if any, of the new location.

(6) Failure to comply with subsection 4 or 5 does not^{Validity} affect the validity of the by-law or resolution.

POWERS

General

15.—(1) Every co-operative has power,

^{Corporate characteristics}

- (a) to have perpetual succession;
- (b) to contract and sue and be sued in its corporate name; and
- (c) to carry on business in or identify itself to the public by a name or style other than its corporate name.

(2) A co-operative has power as incidental and ancillary^{Incidental powers} to the objects set out in its articles,

- 1. to carry on any other business capable of being conveniently carried on in connection with its business or likely to enhance the value of any of its property or rights;
- 2. to acquire or undertake the whole or any part of the business, property and liabilities of any person carrying on any business that the co-operative is authorized to carry on;
- 3. to apply for, register, purchase, lease, acquire, hold, use, control, license, sell, assign or dispose of patents, patent rights, copyrights, trade marks, formulae, licences, inventions, processes, distinctive marks and similar rights;

4. to enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or corporation carrying on or engaged in or about to carry on or engage in any business or transaction that the co-operative is authorized to carry on or engage in or any business or transaction capable of being conducted so as to benefit the co-operative;
5. where authorized to do so by resolution of the board of directors and where it is necessary to enable the co-operative to improve its services to its members, to take or otherwise acquire and hold securities in any other corporation having objects altogether or in part similar to those of the co-operative or carrying on any business capable of being conducted so as to benefit the co-operative;
6. to lend money to any other corporation or any firm or person having dealings with the co-operative or with whom the co-operative proposes to have dealings or to any other corporation any of whose shares are held by the co-operative;
7. to apply for, secure or acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege, that any government or authority or any corporation or other public body may be empowered to grant, and to pay for, aid in and contribute towards carrying it into effect and to assume any liabilities or obligations incidental thereto;
8. to establish and support or aid in the establishment and support of associations, institutions, funds or trusts for the benefit of employees or former employees of the co-operative or its predecessors, or the dependants or connections of such employees or former employees, and grant pensions and allowances, and make payments towards insurance or for any object similar to those set forth in this paragraph, and to subscribe or guarantee money for charitable, benevolent, educational or religious objects or for any exhibition or for any public, general or useful objects;
9. to promote any corporation for the purpose of acquiring or taking over any of the property and liabilities of the co-operative or for any other purpose that may benefit the co-operative;

10. to purchase, lease, take in exchange, hire or otherwise acquire any personal property and any rights or privileges that the co-operative considers necessary or convenient for the purposes of its business;
11. to construct, maintain and alter any buildings or works necessary or convenient for its objects;
12. to acquire by purchase, lease or otherwise and hold any land or interest therein necessary for its actual use and occupation or for carrying on its undertaking, and, when no longer necessary therefor, to sell, alienate or convey it;
13. to take, hold and alienate real and personal property that has in good faith been mortgaged to the co-operative by way of security for, or conveyed to it in satisfaction of, debts previously contracted in the course of its business, or purchased at judicial sales upon levy for such indebtedness, or otherwise purchased for the purpose of avoiding a loss to the co-operative;
14. to construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, water-courses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences that may advance the interests of the co-operative and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
15. to raise and assist in raising money for, and aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person or corporation and guarantee the performance or fulfilment of any contracts or obligations of any person or corporation, and in particular guarantee the payment of the principal of and interest on the debt obligations of any such person or corporation;
16. to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable instruments;
17. where authorized to do so by a special resolution and by such additional authorization as the articles provide, to sell, lease, exchange or otherwise dispose

- of all or substantially all the property of the co-operative for such consideration as the co-operative thinks fit;
18. to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with the property of the co-operative in the ordinary course of its business;
 19. to adopt such means of making known the products or services of the co-operative as may seem expedient, and in particular by advertising, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes and rewards and making donations;
 20. to cause the co-operative to be registered and recognized in any foreign jurisdiction or any province or territory of Canada, and designate persons therein according to the laws of that foreign jurisdiction or that province or territory of Canada to represent the co-operative and to accept service for and on behalf of the co-operative of any process or suit;
 21. to allot and issue fully-paid shares of the co-operative in payment or part payment of any property purchased or otherwise acquired by the co-operative or for any past services performed for the co-operative;
 22. to distribute among the members of the co-operative in cash, kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner deemed advisable, any property of the co-operative, but not so as to decrease the capital of the co-operative unless the distribution is made for the purpose of enabling the co-operative to be dissolved or the distribution, apart from this paragraph, would be otherwise lawful;
 23. to establish agencies and branches;
 24. to take or hold mortgages, hypothecs, liens and charges to secure payment of the purchase price, or of any unpaid balance of the purchase price, of any part of the property of the co-operative of whatsoever kind sold by the co-operative, or for any money due to the co-operative from purchasers and others and to sell or otherwise dispose of any such mortgage, hypothec, lien or charge;

25. to pay all costs and expenses of or incidental to the incorporation and organization of the co-operative;
26. to invest and deal with the moneys of the co-operative not immediately required for the objects of the co-operative in such manner as may be determined;
27. to do any of the things authorized by this subsection and all things authorized by its articles as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;
28. to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the co-operative.

(3) Any of the powers set out in subsection 2 may be withheld or limited by the articles. Limited by articles

(4) Every co-operative may exercise its powers beyond the boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights. Powers to act outside of Ontario

16.—(1) No act of a co-operative and no transfer of real or personal property to or by a co-operative, otherwise lawful, that is heretofore or hereafter done or made, is invalid by reason of the fact that the co-operative was without capacity or power to do such act or make or receive such transfer, but such lack of capacity or power may be asserted, Acting outside powers

- (a) in a proceeding against the co-operative by a member under subsection 2;
- (b) in a proceeding by the co-operative, whether acting directly or through a receiver, liquidator, trustee or other legal representative or through members in a representative capacity, against a director or officer or former director or officer of the co-operative; or
- (c) as cause for the cancellation of the certificate of incorporation of the co-operative under section 166.

(2) A member of a co-operative may apply to a court of competent jurisdiction for an order to restrain the co-operative from doing any act or transferring or receiving the transfer of real or personal property on the ground that the co-operative lacks capacity or power for the purpose, and the court may, if it considers it to be just and equitable, grant an order prohibiting the co-operative from doing the act or transferring Restraining order

or receiving the transfer of the real or personal property, but, where the act or transfer sought to be restrained or prohibited is being or to be done or made under a contract to which the co-operative is a party,

- (a) all the parties to the contract shall be parties to the proceeding;
- (b) the court in granting the order may set aside the contract and allow the co-operative or other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the granting of the order and setting aside of the contract, other than anticipated profits from the contract.

Loans to
members,
directors,
etc.

17.—(1) A co-operative shall not make loans to any of its members, directors or employees or give directly or indirectly, by means of a loan, guarantee, the provision of security or otherwise, any financial assistance to any member, director or employee, except in the course of transactions of a type available to all members of the co-operative.

Liability of
directors
and officers

(2) Those directors and officers of a co-operative who authorize or consent to making a loan or giving financial assistance in contravention of subsection 1 are jointly and severally liable to the co-operative and to its creditors for any actual loss to the co-operative together with interest at the rate of 6 per cent a year.

Contracts

Contracts in
writing
under seal

18.—(1) A contract that if entered into by an individual person would by law be required to be in writing and under seal may be entered into on behalf of a co-operative in writing under the seal of the co-operative.

Contracts in
writing not
under seal

(2) A contract that if entered into by an individual person would by law be required to be in writing signed by the parties to be charged therewith may be entered into on behalf of a co-operative in writing signed by any person acting under its authority, express or implied.

Parol
contracts

(3) A contract that if entered into by an individual person would by law be valid although made by parol only and not reduced into writing may be entered into by parol on behalf of a co-operative by any person acting under its authority, express or implied.

19. A co-operative may, by writing under seal, empower any person, either generally or in respect of any specified matters, to execute, as its attorney and on its behalf in any place within or outside Ontario, documents to which it is a party in any capacity and that are required by law to be under seal, and every document signed by such attorney on behalf of the co-operative acting within the scope of his authority, express or implied, and under his seal binds the co-operative and has the same effect as if it were under the seal of the co-operative.

Power of
attorney

20.—(1) In this section,

Interpre-
tation

- (a) “contractor” means a person who enters into a pre-incorporation contract in the name of or on behalf of a co-operative before its incorporation;
- (b) “other party” means a person with whom a contractor enters into a preincorporation contract;
- (c) “preincorporation contract” means a contract entered into by a contractor in the name of or on behalf of a co-operative before its incorporation.

(2) A co-operative may adopt a preincorporation contract entered into in its name or on its behalf, and thereupon the co-operative is entitled to the benefits and is subject to the liabilities that were contracted in its name or on its behalf and the contractor ceases to be entitled to such benefits or to be subject to such liabilities.

Adoption of
preincor-
poration
contracts

(3) Where a preincorporation contract is not adopted by a co-operative, the contractor is entitled to the benefits and subject to the liabilities under the contract and is entitled to recover from the co-operative the value of any benefit received by the co-operative under the contract.

Non-
adoption of
preincor-
poration
contracts

(4) Whether or not a preincorporation contract is adopted by the co-operative, the other party may apply to the court which may, notwithstanding subsections 2 and 3, make an order fixing or apportioning liability as between the contractor and the co-operative in any manner the court considers just and equitable under the circumstances.

Application
to court
for relief

By-Laws and Resolutions

21. The directors may pass by-laws not contrary to this Act or to the articles to regulate,

By-laws

- (a) the allotment and issue of shares, the payment thereof, the issue of share certificates and the transfer and the registration of transfers of shares;
- (b) the admission of persons as members and as *ex officio* members and the qualification of and the conditions of membership;
- (c) the time for and the manner of election of directors;
- (d) the qualification and remuneration of directors including conditions on eligibility of directors of the co-operative by reference to a minimum annual volume of business conducted by a director with the co-operative;
- (e) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the co-operative and the security, if any, to be given by them to it;
- (f) the time and place and the notice to be given for the holding of meetings of the members and of the board of directors, the quorum at meetings of members and the procedure in all things at members' meetings and at meetings of the board of directors;
- (g) the payment of fees and dues of members;
- (h) the issue of membership cards and loan certificates;
- (i) the suspension and termination of memberships by the co-operative and by the members;
- (j) the conduct in all other particulars of the affairs of the co-operative.

Remuneration of directors

22. A by-law relating to the remuneration of a director as director shall fix the remuneration and the period for which it is to be paid.

Passing of by-laws

23. No by-law is effective until it is,

- (a) passed by the directors of a co-operative; and
- (b) confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the members of the co-operative duly called for that purpose, or such greater proportion of the votes cast as the articles provide.

Member Groups and Delegates

24.—(1) The directors may pass by-laws providing for, By-laws
re delegates

- (a) the division of its members into groups, either territorially or on the basis of common interest;
- (b) the election of some or all of its directors,
 - (i) by such groups on the basis of the number of members in each group or the volume of business done by each group with the co-operative, or both, or
 - (ii) for the groups in a defined geographical area, by the delegates of such groups meeting together;
- (c) the election of delegates and alternate delegates to represent each group on the basis of the number of members in each group or the volume of business done by each group with the co-operative, or both;
- (d) where all of the members are co-operatives, the election of delegates and alternate delegates to represent such co-operatives on the basis of the number of members in each co-operative or the volume of business done with each co-operative, or both;
- (e) the number and method of electing delegates;
- (f) the holding of meetings of delegates;
- (g) the authority of delegates at meetings or providing that a meeting of delegates shall for all purposes be deemed to be and to have all the powers of a meeting of the members;
- (h) the holding of meetings of members or delegates territorially or on the basis of common interest;
- (i) the payment of remuneration and expenses of delegates attending meetings.

(2) A delegate has only one vote and shall not vote by Voting
proxy.

(3) No person shall be elected a delegate who is not a Qualifi-
cation
of delegates
member, officer or director of the co-operative.

Saving

(4) No by-law under subsection 1 shall prohibit members from attending meetings of delegates and participating in the discussions at such meetings.

CAPITAL

Authorized Capital

Shares

25.—(1) The authorized capital of a co-operative shall be divided into shares with par value and may consist of shares of more than one class.

Par value

(2) Each class of shares shall have a par value of \$1 or any multiple thereof not exceeding \$100.

Authorized capital

(3) The authorized capital of the co-operative shall be expressed in Canadian currency in its articles and is an amount equal to the total of the products of the number of shares of each class multiplied by the par value thereof.

Common shares

26.—(1) The common shares of a co-operative shall be shares to which there is attached no preference, right, condition, restriction, limitation or prohibition set out in the articles of the co-operative other than the restriction on the allotment, issue or transfer.

Classes of shares

(2) Where a co-operative has only one class of shares, that class shall be common shares and designated as co-operative or co-op common shares.

Idem

(3) Where a co-operative has more than one class of shares, one class shall be common shares, designated as provided in subsection 2, and the other shares shall consist of one or more classes of preference shares and shall have attached thereto the designation co-operative or co-op preference shares and such other designation and preferences, rights, conditions, restrictions, limitations or prohibitions as set out in the articles.

Preference shares

(4) No class of preference shares shall be designated as preference shares or by words of like import, unless the class has attached thereto a preference or right over the common shares.

Preferences, rights, etc.

27. A co-operative may issue one or more classes of preference shares having attached thereto preferences, rights, conditions, restrictions, limitations or prohibitions, including but not limited to,

- (a) the right to cumulative, non-cumulative or partially cumulative dividends;

- (b) a preference over any other class or classes of shares as to the payment of dividends;
- (c) a preference over any other class or classes of shares as to the repayment of the par value together with any dividends declared but unpaid upon the dissolution of the co-operative or otherwise;
- (d) the right of the co-operative to redeem, without the consent of the holders thereof, all or a part of the shares of that class at their par value together with any dividends declared but unpaid.

28. Each share of a class shall be the same in all respects ^{Equality of shares of a class} as every other share of that class.

Issued Capital

29. The issued capital of a co-operative shall be expressed ^{Issued capital} in Canadian currency and is an amount equal to the total of the products of the number of issued shares of each class multiplied by the par value thereof less such decreases in the issued capital as from time to time have been effected by the co-operative in accordance with this Act.

30.—(1) Where an issued share of a class is cancelled, the ^{Cancellation of par share} issued capital is decreased by an amount equal to the par value of the shares of that class.

(2) Where a fraction of an issued share of a class is cancelled, ^{Cancellation of fractions of shares} the issued capital is decreased by an amount that bears the same proportion to the amount determined under subsection 1 that the fraction bears to a whole share of that class.

Redemption, Purchase and Surrender

31.—(1) Where the articles provide that the shares of a ^{Redemption of preference shares} class of preference shares are redeemable without the consent of the holders thereof and part only of the preference shares are to be redeemed, the shares to be redeemed shall be selected,

- (a) by lot in such manner as the board of directors determines;
- (b) as nearly as may be in proportion to the number of preference shares of the class registered in the name of each holder of shares of that class; or
- (c) in such other manner as the board of directors determines with the consent of the holders of prefer-

ence shares of the class obtained in the manner set out in subsection 2,

but the articles may confine the manner of selection to one or more of those methods set out in clauses *a*, *b* and *c*.

Insolvency (2) A co-operative shall not redeem shares under subsection 1 if the co-operative is insolvent or if the redemption would render the co-operative insolvent.

Method of redemption (3) Where shares of a class of preference shares are selected in the manner referred to in clause *c* of subsection 1, the selection shall be consented to in writing by,

(a) all the holders of the preference shares of the class;
or

(b) at least 95 per cent of the holders of the preference shares of the class holding at least 95 per cent of the issued shares of that class if, after twenty-one days notice has been given by sending notice to each of the holders of shares of that class addressed to him at his latest address as shown on the records of the co-operative, none of the holders of shares of that class dissents in writing to the co-operative.

Idem (4) Where a holder of redeemable preference shares of a co-operative dies or leaves its employment, notwithstanding subsection 1, it may within one year of such event redeem all or any of the preference shares held by him.

Purchase of preference and common shares

32.—(1) Subject to subsection 2, a co-operative,

(a) with the consent of the holder thereof, may purchase all or a part of the shares in the co-operative held by any person upon payment of such an amount to that person not exceeding the par value of the shares together with any dividends declared but unpaid;

(b) when a corporate member is about to be dissolved or a member has failed for a period of two years to transact any business with the co-operative, may redeem without the consent of such member his shares upon payment to him of an amount equal to the book value or par value of such shares, whichever is the lesser.

Insolvency (2) A co-operative shall not purchase or redeem shares under subsection 1 if the co-operative is insolvent or if the purchase would render the co-operative insolvent.

(3) Where shares are purchased or redeemed by a co-operative under subsection 1 or where preference shares are redeemed pursuant to the articles, ^{Method}

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the co-operative are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
 - (i) the board of directors may at the time of the purchase or redemption cancel the shares in which case the authorized and issued capital of the co-operative are thereby decreased and the articles are amended accordingly; or
 - (ii) the board of directors may resell the shares at such time and price and on such terms as it determines.

33.—(1) A co-operative may accept from any member a donation of any of its shares without any repayment of capital in respect thereof. ^{Donation of shares}

(2) Shares accepted under subsection 1 are not thereby cancelled, and the board of directors may sell the shares at such time and price and on such terms as it determines. ^{Sale of donated shares}

Offering Statement

34.—(1) Prior to the issue of any securities by a co-operative, the co-operative shall file with the Minister an offering statement and obtain a receipt therefor. ^{Offering statement}

(2) Subsection 1 does not apply to, ^{Exception}

- (a) the issue of shares under subsection 1 of section 56 or of debt obligations under subsection 4 of section 56; or
- (b) a co-operative that has fifteen or fewer members

35.—(1) An offering statement shall provide full, true and plain disclosure of all material facts relating to the securities proposed to be issued. ^{Standard of disclosure}

(2) An offering statement shall comply as to form and content with the requirements of this Act and the regulations. ^{Form and content}

(3) There shall be filed with an offering statement such documents, reports and other material as are required by this Act and the regulations. ^{Supporting material}

**Material
changes**

(4) Where there is a material change in the facts set forth in an offering statement, whether before or after the issuance of a receipt therefor, the co-operative shall, within thirty days of that change, file with the Minister a statement of such change.

**Further
statements**

(5) A co-operative may, and shall if required by the Minister, file a further offering statement revised to give effect to all previous material changes in place of the statement of material change mentioned in subsection 4.

**Issue of
receipts**

36.—(1) The Minister may in his discretion issue a receipt for any statement filed under section 34 or subsections 4 or 5 of section 35 unless it appears to the Minister that,

- (a) the statement or any document required to be filed therewith,
 - (i) fails to comply in any substantial respect with any of the requirements of this Act or the regulations,
 - (ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or
 - (iii) conceals or omits to state any material facts necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made; or
- (b) the proceeds from the sale of the securities to which the statement relates that are to be paid into the treasury of the co-operative, together with other resources of the co-operative, are insufficient to accomplish the purpose of the issue stated in the statement.

Idem

(2) The Minister shall not make any determination under subsection 1 without making an order or ruling in writing and without giving the co-operative that filed the statement a prior opportunity to be heard.

**Inspection of
statement**

37.—(1) A copy of a statement for which the Minister has issued a receipt under section 36 shall be open to inspection,

- (a) at the offices of the Ministry; and
- (b) during normal business hours, at the head office of the co-operative.

(2) No person shall refuse to permit a person to inspect ^{Extracts} such statements or to make extracts therefrom.

38. A co-operative already in existence when this Act ^{Transition} comes into force shall have a period of 180 days from that date during which to comply with sections 34 to 37.

Allotment, Issue and Transfer

39.—(1) Shares shall not be allotted or issued except for a ^{Issue of shares} consideration at least equal to the product of the number of shares allotted or issued multiplied by the par value thereof.

(2) No share shall be issued until it is fully paid and a ^{Consideration for shares} share is not fully paid until all the consideration therefor in cash, property or services, as determined under this section, has been received by the co-operative.

(3) For the purposes of subsection 2 and paragraph 21 of ^{Idem} subsection 2 of section 15, a document evidencing indebtedness of the allottee does not constitute property and services shall be past services actually performed for the co-operative, and the value or property or services shall be the value the directors determine by express resolution to be in all the circumstances of the transaction the fair equivalent of the cash value.

40. No transfer of common shares in a co-operative with ^{Restriction on transfer of common shares} share capital, unless made by sale under execution or under the decree, order or judgment of a court of competent jurisdiction or by transmission to the personal representative of a member, is valid for any purpose unless,

- (a) the transfer has been authorized by resolution of the directors of the co-operative or by a person authorized by such a resolution to approve such transfers;
- (b) the transferee is admitted to membership in the co-operative as required by its articles and by-laws; and
- (c) the entry thereof has been duly made in the register of transfers of the co-operative or in a branch register of transfers,

except only as evidence of the rights of the parties thereto towards each other.

41.—(1) A co-operative may provide by by-law for the ^{Commission on sale of shares} payment of commissions or allowing discounts to persons in consideration of their subscribing or agreeing to subscribe,

whether absolutely or conditionally, for shares in the co-operative, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares but no such commission or discount shall exceed 25 per cent of the amount of the subscription price.

No
unauthorized
commission

(2) Except as provided in subsection 1, no co-operative shall apply any of its shares or capital, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares of the co-operative or procuring or agreeing to procure subscriptions whether absolute or conditional, for such shares, whether the shares or capital is so applied by being added to the purchase money of any property acquired by the co-operative or to the contract price of any work to be executed for the co-operative, or is paid out of the nominal purchase money or contract price or otherwise.

Shares
personal
property

42. The shares of a co-operative are personal property and are transferable in such manner and subject to such conditions and restrictions as are prescribed by this Act and the articles of the co-operative.

Lien on
shares

43. Where the articles or by-laws so provide the co-operative has a lien to the extent of the debt on the shares registered in the name of a member who is indebted to the co-operative.

Share and Loan Certificates

Share and
loan
certificates

44.—(1) Every member is entitled to a share or loan certificate in respect of the shares held or loans made by him, signed by the proper officers in such form as the by-laws of the co-operative provide, but in no case is the co-operative bound to issue more than one share or loan certificate in respect of a share or shares held or a loan made jointly by several persons, and delivery of a share or loan certificate to one of several joint holders or lenders is sufficient delivery to all.

Fee

(2) A co-operative may charge a fee of not more than \$1 for every share certificate issued, except that in the case of the allotment and issue of shares, no fee shall be charged.

Signing of
certificate

45. A share or loan certificate shall be signed manually by at least one officer of the co-operative or by or on behalf of a transfer agent of the co-operative, and the co-operative may by by-law provide that any additional signatures required on share or loan certificates may be printed, engraved, litho-

graphed or otherwise mechanically reproduced thereon, and in such event share or loan certificates so signed are as valid as if they had been signed manually.

46.—(1) Every share or loan certificate shall state upon its face, Contents of certificates

- (a) the name of the co-operative and the words “A co-operative incorporated under the law of the Province of Ontario” or words of like effect ;
- (b) the name of the person to whom the share or loan certificate is issued as holder ;
- (c) the amount, maturity date and annual rate of interest where the certificate represents a loan ;
- (d) the number and class of shares represented thereby and the par value thereof where the certificate represents shares ;
- (e) a statement of the dividend rate, where applicable.

(2) Every share certificate shall have noted conspicuously thereon the words “Transfer of these shares is restricted”. Restrictions to be noted

(3) Where the articles or by-laws provide that a co-operative has a lien on shares as authorized by section 43, the right of the co-operative to the lien shall be noted conspicuously on every share certificate issued by the co-operative. Notice of lien

(4) In this section, “noted conspicuously” means written in such a way that the person against whom words so noted or appearing are to operate ought reasonably to notice them. Interpretation

47.—(1) A share certificate issued for a share of a class of preference shares shall, Contents of preference share certificate

- (a) legibly state on the certificate or have attached thereto a legible statement of the preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class of shares ; or
- (b) legibly state on the certificate that there are preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class and that a copy of the full text thereof is obtainable on demand and without fee from the co-operative.

Idem

(2) Where a share certificate contains a statement as provided in clause *b* of subsection 1, the co-operative shall furnish to the holder of the shares on demand without fee a copy of the full text of the preferences, rights, conditions, restrictions, prohibitions and limitations attaching to the share.

Fractional shares

48. Where, as a result of a change in authorized capital of a co-operative, a person becomes entitled to a fraction of a share, he is not entitled to be registered on the records of the co-operative in respect thereof or to receive a share certificate therefor, but he is entitled to receive a bearer fractional certificate in respect to such fraction, and on presentation at the head office of the co-operative or at a place designated by the co-operative of bearer fractional certificates for fractions that together represent a whole share, a share certificate for a whole share shall be issued in exchange therefor.

Loan Capital

Member loans

49.—(1) The capital of co-operatives without share capital may be in the form of loans from members, called “member loans”, and such loans may be in such amounts, payable on demand or at such times and without interest or at interest not exceeding 8 per cent per annum, or if authorized by by-law of the co-operative, at such a lesser rate as the board of directors may by resolution determine.

Borrowing from members

(2) A co-operative may borrow money from its members not being loans made as a condition of membership or as compulsory loans of patronage returns, in such amounts payable on demand or at such times and either without interest or with interest at such rate as the by-laws provide or, if authorized by by-law, at such rate as the directors may by resolution determine.

Borrowing Powers

Borrowing powers

50.—(1) Where authorized by by-law, the directors may,

- (a) borrow money on the credit of the co-operative; or
- (b) issue, sell or pledge debt obligations of the co-operative; or
- (c) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal movable or immovable property of the co-operative, including book debts, rights, powers,

franchises and undertaking, to secure any debt obligations or any money borrowed or other debt or liability of the co-operative.

(2) Any by-law referred to in subsection 1 may,

Contents
of by-law

- (a) limit the amount to be borrowed as determined by the by-law; and
- (b) provide for the delegation by the directors of the powers conferred on them under the by-law to such directors or officers of the co-operative and to such extent and manner as is set out in the by-law.

51. Nothing in this Act prohibits the issue of debt obligations in bearer form.

Bearer
debt
obligations

52. A condition contained in a debt obligation or in an instrument for securing a debt obligation is not invalid by reason only that the debt obligation is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

Irredeemable
debt
obligations

53.—(1) Where a co-operative makes a charge, mortgage or other instrument of hypothecation or pledge to secure its debt obligations, the co-operative shall forthwith after the making thereof, file a duplicate original or certified copy of the instrument in the office of the Minister, but such filing may be made by any interested person.

Filing
debt
obligations

(2) Where the filing is by an interested person under subsection 1, that person is entitled to recover from the co-operative the amount of any prescribed fee paid by him on such filing.

Recovery
of fee

(3) Subsection 1 does not apply to an instrument filed or registered under any other Act.

Exception

DIVIDENDS AND SURPLUS

54. A co-operative may by by-law provide that, before any distribution of surplus arising from the business of the co-operative in each fiscal year is made, the co-operative may,

Reserve
fund and
dividends

- (a) set aside reserve funds;
- (b) provide for the payment of dividends on the share capital at a rate not to exceed 8 per cent per annum of the amount paid up thereon.

Surplus

Distribution
of net
surplus

55.—(1) Subject to subsection 4, the surplus arising from the business of a co-operative, other than a direct charge co-operative, in each fiscal year shall be allocated, credited or paid to the members in proportion to the business done by each member with or through the co-operative, computed at a rate in relation to the quantity, quality or value of the goods or products acquired, marketed, handled, dealt in or sold or services rendered by the member or by the co-operative from or on behalf of or to the member, or the co-operative whether as principal or as agent of the member or otherwise, with appropriate differences in the rate for different classes, grades or qualities thereof.

Idem

(2) The co-operative may by by-law provide that part of the surplus may be allocated, credited or paid to non-members at the same or at lesser rates than to members.

Patronage
return

(3) The amount that is allocated, credited or paid to members or non-members in each fiscal year shall be known as the patronage return.

Limitation
of patronage
return

(4) The co-operative may by by-law provide that, where the value of the goods or products acquired, marketed, handled, dealt in or sold, or services rendered by the co-operative from or on behalf of or to any member or non-member in any year does not exceed \$250, or such lesser amount as is specified in the by-law, no patronage return shall be allocated, credited or paid to such member or non-member.

Marketing
boards

(5) Where members of a co-operative are required by a marketing plan established under an Act of the Legislature, or of the Parliament of Canada, to sell or deliver products or goods or render services to or for a marketing board, then for the purposes of making a patronage return to the members of the co-operative, the members shall be deemed to have sold, delivered or rendered those goods, products or services to the co-operative.

Investment
of patronage
return

56.—(1) A co-operative may by by-law provide that in each fiscal year the whole, or such part as the directors may by resolution determine, of the patronage return of each member shall be applied to the purchase for the member of a stated number of unissued shares of the co-operative or a stated number of issued shares of the co-operative, if obtainable.

Notice

(2) Where a co-operative has enacted a by-law under subsection 1 and the whole or part of the patronage return of a

member is required to be invested in issued shares, the co-operative shall mail a written notice to each member stating the number of shares to be purchased by him.

(3) Unless within thirty days from the date of mailing of the notice referred to in subsection 2 the member required to purchase issued shares has presented for transfer to himself the number of shares that he is required to purchase, the co-operative may on behalf of such member, ^{Purchase of shares on behalf of member}

- (a) purchase the required number of shares from members who are willing to sell such shares;
- (b) pay out of the patronage return of such member the purchase price;
- (c) transfer such shares to the member; and
- (d) issue and forward to such member a certificate representing such shares.

(4) A co-operative may enact by-laws requiring its members to lend to it the whole, or such part as the directors may determine, of the patronage returns to which they may become entitled in each fiscal year upon such terms and at such rate of interest as the directors, if authorized by by-law, may by resolution determine, but in no case at a rate of interest greater than 8 per cent per annum. ^{Compulsory borrowing}

(5) No member shall be required under this section to purchase issued or unissued shares at a price in excess of the par value thereof or issued shares when no such shares are available for purchase. ^{Idem}

(6) Where the co-operative is insolvent, no member shall be required under this section to lend his patronage return or to purchase shares of the co-operative. ^{Idem}

(7) This section does not prevent a member from receiving so much of his patronage return as has not been appropriated to loans to the co-operative in accordance with a resolution of the board of directors or the by-laws. ^{Idem}

57.—(1) A co-operative may, when authorized by by-law, deduct a percentage amount from the moneys received by the co-operative on the goods, products or services marketed, handled or dealt in by the co-operative for or on behalf of any member. ^{Percentage deductions by co-operative}

(2) An amount retained by a co-operative under subsection 1 shall be applied by the co-operative, ^{Idem}

- (a) as a loan on such terms and at such rate of interest not exceeding 8 per cent per annum as the by-law provides; or
- (b) as an investment by the member in common shares of the co-operative, but no member shall be required to purchase such shares in the co-operative at a price in excess of the par value thereof.

Dividends

Power to
declare
dividends

58.—(1) Subject to subsection 2 and the articles of the co-operative, the directors may declare and the co-operative may pay dividends on its issued shares.

Not to
exceed 8 per
cent

(2) A dividend shall not exceed 8 per cent per annum of the par value of the share.

Manner of
payment

(3) A dividend may be paid in cash or in property not exceeding in value the amount of the dividend.

When
dividend
not to be
declared

(4) The directors shall not declare and the co-operative shall not pay any dividend when the co-operative is insolvent, or any dividend the payment of which renders the co-operative insolvent or that diminishes its capital.

Stock
dividends

59. For the amount of any dividend that the directors may declare payable in cash, they may declare a stock dividend and issue therefor shares of the co-operative as fully paid.

MEMBERS

Membership

Membership

60.—(1) Subject to the provisions of this Act and the articles of the co-operative, membership therein is governed by the by-laws of the co-operative.

Classes of
membership

(2) The articles of a co-operative may provide for more than one class of membership and in that case shall set forth the designation of and the terms and conditions attaching to each class.

Incor-
porators
deemed
members

61.—(1) Each incorporator of a co-operative who has subscribed for a common share in the co-operative or who has paid a membership fee, if any, shall upon the effective date of incorporation be entered upon the register of members.

(2) No person shall become a member of a co-operative until his application for membership has been approved by the directors and the applicant has complied fully with the by-laws governing admission of members. Applicants for membership

(3) A subscription for common shares in a co-operative with share capital constitutes an application for membership and the allotment of a common share to the applicant constitutes admission to membership. Idem

(4) An application for authorization of the transfer of common shares in a co-operative with share capital constitutes an application for membership and the passing of the resolution authorizing the transfer constitutes admission to membership. Idem

62. No transfer of a membership in a co-operative without share capital is valid for any purpose whatever, Restrictions on transfer of memberships

(a) unless a written application for membership by the transferee has been approved by a resolution of the directors of the co-operative or by a person authorized by such a resolution to approve such applications; and

(b) until notification of the approval under clause *a* has been sent the transferee and his name has been entered on a register of members,

except only as evidence of the rights of the parties thereto towards each other.

63.—(1) Subject to the by-laws of the co-operative, a person of the full age of sixteen years or more may become a member thereof. Eligible age for members

(2) Any person under the full age of eighteen years admitted to membership in the co-operative is competent to enter into any contract with the co-operative, and with respect to contracts with the co-operative is *sui juris*. Members sui juris

64.—(1) Subject to section 67, a member may withdraw from a co-operative by giving to the secretary of the co-operative six months notice of his intention to withdraw. Notice of withdrawal

(2) A deceased member shall be deemed to have given notice to the co-operative on the day of his death of his intention to withdraw. Idem

(3) Subject to subsection 4, where notice of intention to withdraw has been given to a co-operative under subsection 1, Repayment to members on withdrawal

or is deemed to have been given under subsection 2, the co-operative shall, within six months of the receipt thereof,

- (a) purchase for an amount equal to the par value together with all dividends declared but unpaid or for an amount that is less than par value and that is agreed to by the co-operative and the member or his personal representative, all shares in the co-operative held by the member; and
- (b) pay to him or his personal representative all amounts held to his credit, excluding term loans, together with any interest accrued thereon and the amount outstanding on loans made to the co-operative by the member that are repayable on demand by the member together with any interest accrued thereon.

Election by
member

(4) Notwithstanding subsection 3, a member who has given notice under subsection 1 may elect in such notice to retain all or some of his shares or loans in the co-operative.

Idem

(5) Where an election is made under subsection 4, the person may later withdraw some or all of his shares or loans from the co-operative by giving notice to the co-operative in the manner prescribed by subsection 1, and the co-operative shall, within six months of the receipt thereof,

- (a) purchase the shares at their par value or at a value that is less than par value and that is agreed to by the co-operative and such person;
- (b) pay to him the amounts held to his credit together with any interest accrued thereon; and
- (c) pay to him the amount outstanding on loans repayable on demand together with any interest accrued thereon,

that are referred to in the notice.

Extension
of time for
repayment

(6) Where, in the opinion of the directors of the co-operative, payments in accordance with subsection 3 or 5 would not be in the best interests of the co-operative, the directors may by resolution extend such payments over a period of not more than five years and pay in each year not less than 20 per cent of the amount to be repaid under subsection 3 or 5.

Dealing by
co-operative
with personal
representa-
tives

65.—(1) Where a person is shown on the records of a co-operative as holding a share as a personal representative, the receipt by such person is a valid and binding discharge to the co-operative for any payment or other distribution made in respect of the share whether notice of any trust has been

given to the co-operative or not, and the co-operative is not bound to see to the application of such payment or other distribution.

(2) Where shares are purchased by a co-operative under subsection 1 of section 32 or subsection 3 of section 64 or section 66 or accepted under subsection 1 of section 33 and are not thereby cancelled, no person is entitled to receive notice of or to vote at meetings of members or to receive any payment in respect of the shares whether by way of dividend or otherwise until such shares are resold. Co-operative not to vote, etc.

66.—(1) A member may be expelled from membership in a co-operative by resolution passed by a majority of the board of directors at a meeting duly called for the purpose not later than thirty days before the date set for the annual meeting of the co-operative. Expulsion of member

(2) A resolution under subsection 1 is not valid unless, Validity

- (a) prior written notice is given to the member setting forth the grounds upon which it is sought to expel him;
- (b) the notice is given such member ten days or more before the date of the meeting of the board of directors called to consider the resolution expelling that member; and
- (c) an opportunity is given such member to appear, either personally or by an agent or counsel, to make submissions at the meeting of the board of directors called to consider the resolution expelling that member.

(3) The secretary of the co-operative shall, within five days of the date of the meeting of the board of directors referred to in subsection 1, notify the member of the decision of the board by registered letter addressed to him at his latest known address. Notice of decision

(4) Where a resolution expelling a member is passed under subsections 1 and 2, the member may appeal the decision of the board of directors at the next annual or general meeting of members and the members by majority vote may confirm, vary or set aside that resolution. Appeal by member

(5) A member who wishes to appeal his expulsion to a meeting of members shall give notice of his intention to appeal within twenty-one days of receipt of the notice of expulsion mentioned in subsection 3, and the directors shall, if written representations are received seven or more days before the mailing of the notice of the meeting, at the expense of the co-operative, forward with the notice of the meeting a Idem

copy of such representations to each member entitled to receive notice of the meeting.

Effect of
expulsion

(6) Where a member has been expelled, the co-operative shall purchase from the member, within one year after his expulsion became final, at par value all his shares in the capital of the co-operative together with all amounts held to his credit together with any interest accrued thereon and the amount outstanding on loans, made to the co-operative by the member that are repayable on demand by the member together with interest accrued thereon.

Whereabouts
of member
unknown

(7) If the whereabouts of a member is unknown to the co-operative after all reasonable efforts have been made to ascertain his address for the purpose of making payment to him under subsection 6, amounts payable thereunder to him shall be transferred to a reserve fund of the co-operative; and any amounts so transferred shall, if claimed within thirty years after being so transferred by a person who produces evidence to the satisfaction of the directors of the co-operative that he is entitled thereto, be paid over to such person and, after the expiration of such thirty-year period, any amount so transferred shall be forfeited to the co-operative and transferred out of the reserve fund to it.

Where
repayment
not to be
made

67.—(1) A co-operative shall not exercise its powers under section 64 or 66,

- (a) if the co-operative is insolvent or if the exercise of its powers under that section would render the co-operative insolvent; or
- (b) if such exercise of its powers would in the opinion of the board of directors be detrimental to the financial stability of the co-operative.

Shares to be
cancelled or
resold

(2) Where the shares of a member are acquired under section 64 or 66,

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the co-operative are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
 - (i) the board of directors may at the time of the purchase cancel the shares, in which case the authorized and issued capital of the co-

operative are thereby decreased and the articles are amended accordingly ; or

- (ii) the board of directors may resell the shares at such time and price and on such terms as it determines.

Member's Rights

68.—(1) Subject to subsection 2, a member of a co-operative may maintain an action in a representative capacity for himself and all other members of the co-operative suing for and on behalf of the co-operative to enforce any right, duty or obligation owed to the co-operative under this Act or under any other statute or rule of law or equity that could be enforced by the co-operative itself, or to obtain damages for any breach of any such right, duty or obligation. Derivative
action

(2) An action under subsection 1 shall not be commenced until the member has obtained an order of the court permitting the member to commence the action. Leave

(3) A member may, upon at least seven days notice to the co-operative, apply to the court for an order referred to in subsection 2, and, if the court is satisfied that, Application
for order to
commence
action

- (a) the member was a member of the co-operative at the time of the transaction or other event giving rise to the cause of action ;
- (b) the member has made reasonable efforts to cause the co-operative to commence or prosecute diligently the action on its own behalf ; and
- (c) the member is acting in good faith and it is *prima facie* in the interests of the co-operative or its members that the action be commenced,

the court may make the order upon such terms as the court thinks fit, except that the order shall not require the member to give security for costs.

(4) At any time or from time to time while the action commenced under this section is pending, the plaintiff may apply to the court for an order for the payment to the plaintiff by the co-operative of reasonable interim costs including solicitor's and counsel fees and disbursements, for which interim costs the plaintiff shall be accountable to the co-operative if the action is dismissed with costs on final disposition at the trial or on appeal. Application
for order for
interim
costs

Trial and
judgment

(5) An action commenced under this section shall be tried by the court and its judgment or order in the cause, unless the action is dismissed with costs, may include a provision that the reasonable costs of the action are payable to the plaintiff by the co-operative or other defendants taxed as between a solicitor and his own client.

Discontin-
uance and
settlement

(6) An action commenced under this section shall not be discontinued, settled or dismissed for want of prosecution without the approval of the court and, if the court determines that the interests of the members may be substantially affected by such discontinuance, settlement or dismissal, the court, in its discretion, may direct that notice in manner, form and content satisfactory to the court shall be given, at the expense of the co-operative or any other party to the action as the court directs to the members thereof whose interests the court determines will be so affected.

Rights of
dissenting
members

69.—(1) If, at a meeting of members of a co-operative,

- (a) a resolution passed by the directors authorizing the sale, lease, exchange or other disposition of all or substantially all the property of the co-operative is confirmed with or without variation by the members;
- (b) a resolution approving an agreement for the amalgamation of the co-operative with one or more other co-operatives is passed by the members;
- (c) a resolution passed by the directors approving the conversion of the co-operative into a corporation to which *The Business Corporations Act* applies is confirmed with or without variation by the members;
- (d) a resolution passed by the directors approving the conversion of the co-operative into one with or without share capital is confirmed with or without variation by the members; or
- (e) a resolution passed by the directors under section 159 is confirmed with or without variation by the members,

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any member who has voted against the confirmation of the resolution may within ten days after the date of the meeting give notice in writing to the co-operative requiring it to purchase his shares or refund the amount outstanding on loans made to the co-operative by the member together with any interest accrued thereon.

Co-operative
bound to
purchase
shares

(2) Within ninety days from,

- (a) the date of the completion of the sale, lease, exchange or other disposition;
- (b) the date set forth in the certificate of amendment or amalgamation; or
- (c) the date of delivery to the Minister of a request in writing for his authorization under section 159,

the co-operative, or amalgamated co-operative, shall purchase the shares of, or refund the amount outstanding on loans made to the co-operative by, every member who has given notice under subsection 1, and every such member shall sell or deliver up his securities to the co-operative.

(3) The amount and terms of the purchase of a member's ^{Purchase price} shares shall be at their par value or at a value that is less than par value and that is agreed to by the co-operative and the member together with all amounts held to his credit and with interest accrued thereon.

(4) The amount and terms of the repayment of any loans ^{Idem} made by the member to the co-operative shall be at the full amount outstanding together with any interest accrued thereon and unpaid.

(5) The co-operative shall not purchase any shares or repay ^{Saving} any member's loans under subsection 2 or 3 if it is insolvent or if the purchase or repayment would render it insolvent.

(6) If the sale, lease, exchange or other disposition is not ^{Idem} completed, the certificate of amendment or amalgamation is not issued, or the authorization of the Minister is not given, the rights of the dissenting member under this section cease and the co-operative shall not purchase the shares of the member nor refund the amount outstanding on loans made to the co-operative by the member under this section.

(7) Nothing in this section shall require a co-operative to ^{Idem} repay a member's term loan before the date of maturity.

70.—(1) Ten per cent of the members of a co-operative may ^{Requisition for by-law or resolution} requisition the directors to call a meeting of the directors for the purpose of passing any by-law or resolution that may properly be passed at a meeting of the directors duly called, constituted and held for that purpose.

(2) The requisition shall set out the by-law or resolution, as ^{Form of requisition} the case may be, that is required to be passed at the meeting and shall be signed by the requisitionists and deposited at the head office of the co-operative, and may consist of several documents in like form, each signed by one or more requisitionists.

Meeting of
directors

(3) Upon deposit of the requisition, the directors shall forthwith call a meeting of the directors for the purpose of passing the by-law or resolution, as the case may be, set out in the requisition.

Meeting of
members

(4) Where the directors do not, within twenty-one days from the date of the deposit of the requisition,

- (a) call and hold such a meeting and pass such a by-law or resolution; and
- (b) call a general meeting of the members for the purpose of confirming the by-law or resolution if the resolution requires confirmation at a general meeting of the members before it is effective,

any of the requisitionists may call a general meeting of the members for the purpose of passing such a by-law or resolution, and the meeting shall be held within sixty days from the date of the deposit of the requisition.

Notice

(5) A meeting of the members called under subsection 4 shall be called as nearly as possible in the same manner as meetings of members are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.

Validity of
by-law or
resolution

(6) Where a by-law or resolution is passed at a meeting of the members called under subsection 4, either as set out in the requisition or as varied at the meeting, it is as valid and effective as if it had been passed at a meeting of the directors duly called, constituted and held for that purpose and confirmed at a meeting of the members duly called, constituted and held for that purpose, and if the resolution or by-law is passed by at least two-thirds of the votes cast at a meeting of the members called under subsection 4, it shall be conclusively deemed to be a special resolution or a by-law, as the case may be, for the purposes of this Act.

Repayment
of expenses

(7) The co-operative shall,

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the failure of the directors to act in accordance with subsections 3 and 4; and
- (b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such

of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting called under subsection 4, the members, by a majority of the votes cast, reject the reimbursement of the requisitionists.

(8) Where a by-law or resolution in respect of which a meeting of directors is requisitioned under this section is not passed or confirmed at a meeting of the members, no requisition for a meeting of directors in respect of a similar by-law or resolution shall be made for a period of at least two years.

New
requisition
on same
subject

71.—(1) On the requisition in writing of 5 per cent of the members of the co-operative, the directors shall,

Circulation
of members'
resolutions,
etc.

- (a) give to the members entitled to notice of the next meeting of members notice of any resolution that may properly be moved and is intended to be moved at that meeting; or
- (b) circulate to the members entitled to vote at the next meeting of members a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or with respect to the business to be dealt with at that meeting.

(2) The notice or statement or both, as the case may be, shall be given or circulated by sending a copy thereof to each member entitled thereto in the same manner and at the same time as that prescribed by this Act, the articles or the by-laws, for the sending of notice of meetings of members.

Notice

(3) Where it is not practicable to send the notice or statement or both at the same time as the notice of the meeting is sent, the notice or statement or both shall be sent as soon as practicable thereafter.

Idem

(4) The directors are not bound under this section to give notice of any resolution or to circulate any statement unless,

Deposit of
requisition,
etc.

- (a) the requisition, signed by the requisitionists, is deposited at the head office of the co-operative,
 - (i) in the case of a requisition requiring notice of a resolution to be given, not less than twenty-one days before the meeting,
 - (ii) in the case of a requisition requiring a statement to be circulated, not less than fourteen days before the meeting; and

- (b) there is deposited with the requisition a sum reasonably sufficient to meet the expenses of the co-operative in giving effect thereto.

Where directors not bound to circulate statement

(5) The directors are not bound under this section to circulate any statement if, on the application of the co-operative or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and on any such application the court may order the costs of the co-operative to be paid in whole or in part by the requisitionists notwithstanding that they are not parties to the application.

Where no liability

(6) No co-operative or a director, officer or employee thereof or person acting on its behalf, except a requisitionist, is liable in damages or otherwise by reason only of the giving of a notice or the circulation of a statement, or both, in compliance with this section.

Duty to deal with requisitioned matter

(7) Notwithstanding anything in the by-laws of the co-operative, where the requisitionists have complied with this section, the resolution, if any, mentioned in the requisition shall be dealt with at the meeting to which the requisition relates.

Repayment of expenses

(8) The co-operative shall pay to the requisitionists the sum deposited under clause *b* of subsection 4 unless at the meeting to which the requisition relates the members by a majority of the votes cast reject the repayment to the requisitionists.

Liabilities of Members

Liability on decrease of issued capital

72.—(1) Where the issued loan or share capital of a co-operative is decreased by an amendment to the articles, each person who was a member on the effective date of the amendment is individually liable to the creditors of the co-operative for the debts due on that date to an amount not exceeding the amount of the repayment to him.

Limitation of liability

(2) A person is not liable under subsection 1 unless,

- (a) the co-operative has been sued for the debt within six months after the effective date of the amendment and execution has been returned unsatisfied in whole or in part; and
- (b) he is sued for the debt in a court of competent jurisdiction within two years from the effective date of the amendment.

(3) After execution has been so returned, the amount due ^{Idem} on the execution, not exceeding the amount of the repayment to the person, is the amount recoverable against such person.

(4) Where it is made to appear that there are numerous ^{Class} members who may be liable under this section, the court ^{actions} of competent jurisdiction may permit an action to be brought against one or more of them as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such members as may be found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sum so determined.

(5) No person holding shares or loans in the capacity of a ^{Member in} personal representative and registered on the records of the ^{fiduciary} co-operative as a member and therein described as representing ^{capacity} in such capacity a named estate, person or trust is personally liable under this section, but the estate, person or trust is subject to all liabilities imposed by this section.

73. A member of a co-operative as such is not answerable ^{Member's} or responsible for any act, default, obligation or liability of the ^{liability} co-operative or for any engagement, claim, payment, loss, ^{limited} injury, transaction, matter or thing relating to or connected with the co-operative.

Meetings of Members

74.—(1) Subject to subsections 2 and 3, the meetings of ^{Place of} the members shall be held at the place where the head office ^{meetings} of the co-operative is located.

(2) Where the by-laws of the co-operative so provide, the ^{Exception} meetings of the members may be held at any place within Ontario.

(3) Where the articles of the co-operative so provide, the ^{Idem} meetings of the members may be held at one or more places outside Ontario specified therein.

75.—(1) Subject to subsection 2 and in the absence of other ^{Members'} provisions in that behalf in the articles or by-laws of the ^{meetings} co-operative,

- (a) notice of the time and place for holding a meeting of the members shall be given to each person who is entitled to notice of meetings and who on the record date for notice appears on the records of the co-

operative as a member by sending the notice by pre-paid mail to his latest address as shown on the records of the co-operative ten days or more before the date of the meeting but in no case more than fifty days before the date of the meeting;

- (b) all questions proposed for the consideration of the members at a meeting of members shall be determined by the majority of the votes cast, and the chairman presiding at the meeting has a second or casting vote in case of an equality of votes;
- (c) the chairman presiding at a meeting, of members may, with the consent of the meeting and subject to such conditions as the meeting decides, adjourn the meeting from time to time and from place to place;
- (d) the president or, in his absence, a vice-president who is a director shall preside as chairman at a meeting of members, but, if there is no president or such a vice-president or if at a meeting neither of them is present within fifteen minutes after the time appointed for the holding of the meeting, the members present shall choose a person from their number to be the chairman;
- (e) unless a poll is demanded, an entry in the minutes of a meeting of members to the effect that the chairman declared a motion to be carried is admissible in evidence as *prima facie* proof of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

Notice

(2) The articles or by-laws of the co-operative shall not provide for fewer than ten days notice for meetings of members and in no case shall notice be given fifty days before the date of the meeting and the articles or by-laws shall not provide that notice may be given otherwise than individually.

Poll

(3) If a poll is demanded, it shall be taken in such manner as the by-laws prescribe, and, if the by-laws make no provision therefor, then as the chairman directs.

Voting

76.—(1) A member of a co-operative has only one vote.

Proxies prohibited

(2) Subject to subsection 3, no member of a co-operative shall vote by proxy.

Voting by corporation

(3) A corporate member may appoint under its corporate seal one of its directors or officers to attend and vote on its

behalf at meetings of members and such director or officer has only one vote.

77. A co-operative shall hold an annual meeting of its members not later than eighteen months after its incorporation and subsequently not more than fifteen months after the holding of the last preceding annual meeting and at such meeting any member shall have an opportunity to raise any matter relevant to the affairs and business of the co-operative. Annual meetings

78. The directors may at any time call a general meeting of the members for the transaction of any business, the general nature of which is specified in the notice calling the meeting. General meetings

79.—(1) Five per cent of the members of a co-operative may requisition the directors to call a general meeting of the members for any purpose that is connected with the affairs of the co-operative and that is not inconsistent with this Act. Requisition for members' meeting

(2) The requisition shall state the general nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the head office of the co-operative and may consist of several documents in like form, each signed by one or more requisitionists. Requisition

(3) Upon deposit of the requisition, the directors shall forthwith call a general meeting of the members for the transaction of the business stated in the requisition. Duty of directors to call meeting

(4) If the directors do not within thirty days from the date of the deposit of the requisition call and hold the meeting, any of the requisitionists may call the meeting, which shall be held within sixty days from the date of the deposit of the requisition. When requisitionists may call meeting

(5) A meeting called under this section shall be called as nearly as possible in the same manner as meetings of members are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting. Calling of meeting

(6) The co-operative shall, Repayment of expenses

(a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the action taken by them under subsection 4; and

(b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services,

to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting, the members by a majority of the votes cast reject the reimbursement of the requisitionists.

Requisition
by court
order

80. Notwithstanding section 79, upon application by a member of a co-operative, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the co-operative or its members that the meeting be held on requisition, may make an order, upon such terms as to security for the costs of holding the meeting or otherwise as to the court seem fit, requiring the directors to call a general meeting of the members for any purpose that is connected with the affairs of the co-operative and that is not inconsistent with this Act.

Court may
direct
method of
holding
meetings

81. If for any reason it is impracticable to call a meeting of members of a co-operative in any manner in which meetings of members may be called or to conduct the meeting in the manner prescribed by this Act, the articles or by-laws, the court may, on the application of a director or a member who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the court thinks fit, and any meeting called, held and conducted in accordance with the order shall for all purposes be deemed to be a meeting of members of the co-operative duly called, held and conducted.

Record
dates

82. The by-laws may provide for the fixing in advance of a date as the record date,

- (a) for the determination of the members entitled to notice of meetings of the members, which record date for notice shall not be more than fifty days before the date of the meeting and not fewer than the minimum number of days for notice of the meeting and where no such record date for notice is fixed, the record date for notice shall be at the close of business on the day next preceding the day on which notice is given or sent; and
- (b) for the determination of the members entitled to vote at meetings of the members which record date for voting shall not be more than two days, excluding Saturdays and holidays, before the date of the meeting and where no such record date for voting is fixed, the record date for voting shall be the time of the taking of the vote.

83.—(1) Where a person holds shares as a personal representative of a member, the personal representative is entitled to vote at all meetings of members. ^{Personal representative}

(2) Where a person mortgages or hypothecates his shares, that person is the person entitled to vote at all meetings of members unless, in the instrument creating the mortgage or hypothec, he has expressly empowered the person holding the mortgage or hypothec to vote, in which case, subject to the articles, such holder is the person entitled to vote. ^{Mortgagee, etc.}

84. Where two or more persons hold the same share or shares jointly, any one of such persons present at a meeting of members has the right in the absence of the other or others to vote, but, if more than one of such persons are present and vote, they shall vote together as one on the share or shares jointly held by them. ^{Joint shareholders}

DIRECTORS AND OFFICERS

Directors

85.—(1) Every co-operative shall have a board of directors however designated. ^{Board of directors}

(2) The board of directors shall consist of a fixed number of directors, not fewer than five. ^{Composition}

(3) A majority of directors on the board of directors of every co-operative shall be resident Canadians. ^{Idem}

86.—(1) Each of the persons named as first directors in the articles of a co-operative is a director of the co-operative until replaced by a person duly elected or appointed in his stead. ^{First directors}

(2) The first directors of a co-operative have all the powers and duties and are subject to all the liabilities of directors. ^{Idem}

87. No person shall be a director of a co-operative unless he is a member thereof or a director, officer, shareholder or member of a corporate member thereof, and, where a director or a corporation of which he is an officer, director, shareholder or member ceases to be a member, he thereupon ceases to be a director. ^{Directors to be members}

88.—(1) A co-operative may by by-law increase or, subject to subsection 2 of section 85, decrease the number of its directors as set out in its articles. ^{Change in number of directors}

(2) Where a co-operative incorporated under *The Corporations Act* or a predecessor of that Act or under a general or special Act of the Legislature before the coming into ^{Idem R.S.O. 1970, c. 89}

force of this Act has fewer than five directors, it shall, under subsection 1, within two years of the coming into force of this Act, increase the number of its directors to not fewer than five.

Filing of
by-law

(3) A co-operative shall file with the Minister a certified copy of the by-law within ten days after the by-law has been confirmed by the members.

Validity

(4) Failure to comply with subsection 3 does not affect the validity of the by-law.

Age of
directors

89.—(1) No person under eighteen years of age shall be a director of a co-operative.

Qualifications

(2) No undischarged bankrupt or mentally incompetent person shall be a director, and, if a director becomes a bankrupt or a mentally incompetent person, he thereupon ceases to be a director.

Consent

(3) A person who is elected or appointed a director is not a director unless,

(a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as director;

(b) where he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.

Idem

(4) For the purposes of subsection 3, a person who is elected or appointed as director and refuses under clause *a* of subsection 3 or fails to consent under clause *b* of subsection 3 shall be deemed not to have been elected or appointed as a director.

Election of
directors

90.—(1) The directors shall be elected by the members in general meeting, and the election shall be by ballot in the manner prescribed by section 91.

Idem

(2) The election of directors shall take place yearly or at such other interval not exceeding five years as is provided by the articles and all the directors then in office shall retire, but are eligible for re-election.

Continuance
in office

(3) If an election of directors is not held within the prescribed period, the directors continue in office until their successors are elected.

(4) The articles may provide for the election and retirement of directors in rotation, but in that case no director shall be elected for a term of more than five years and at least two directors shall retire from office in each year. Rotation

(5) It shall not be necessary for all directors to hold office for the same term. Idem

91. Every member entitled to vote at an election of directors, if he votes, shall cast thereat a number of votes equal to the number of directors to be elected, and the member shall distribute the votes among the candidates in such manner as he sees fit, but no candidate shall receive more than one vote from each member. Voting for directors

92.—(1) Subject to subsection 2, where a vacancy occurs in the board, and a quorum of directors remains, the directors remaining in office may appoint a qualified person to fill the vacancy for the remainder of the term, but the articles may provide that such vacancy may only be filled by election at a general meeting of the members duly called for that purpose. Vacancies

(2) Where the number of directors is increased, the vacancies resulting from such increase shall only be filled by election at a general meeting of the members duly called for that purpose. Idem

(3) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a general meeting of the members to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any member. Idem, where no quorum

93. Unless the articles or by-laws otherwise provide, a majority of the board of directors constitutes a quorum, but in no case shall a quorum be less than two-fifths of the board of directors. Quorum of directors

94.—(1) Subject to subsection 2, the meetings of the board of directors and the executive committee shall be held at the place where the head office of the co-operative is located. Place of meetings

(2) Where the by-laws of the co-operative so provide, the meetings of the board of directors and of the executive committee may be held at any place within or outside Ontario, but in any financial year of the co-operative a majority of the meetings of the board of directors and a majority of the meetings of the executive committee shall be held at a place within Canada. Exception

(3) Subject to the by-laws of the co-operative, where all the directors have consented thereto, any director may par- Meetings by telephone

ticipate in a meeting of the board of directors or of the executive committee by means of conference, telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a director participating in a meeting pursuant to this subsection shall be deemed for the purposes of this Act to be present in person at that meeting.

Place of
meetings by
telephone

(4) If a majority of the directors participating in a meeting held pursuant to subsection 3 are then in Canada, the meeting shall be deemed to have been held in Canada.

Calling
meetings of
directors

95.—(1) In addition to any other provision in the articles or by-laws of a co-operative for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting.

Notice

(2) In the absence of any other provision in that behalf in the by-laws of the co-operative, notice of the time and place for the holding of the meeting called under subsection 1 shall be given to every director of the co-operative by sending the notice by prepaid mail ten days or more before the date of the meeting to his latest address as shown on the records of the co-operative.

Duties

96.—(1) The board of directors shall manage or supervise the management of the affairs and business of the co-operative.

Conduct of
business

(2) Subject to section 97, no business of a co-operative shall be transacted by its board of directors except at a meeting of directors at which a quorum of the board is present and at which a majority of the directors present are resident Canadians.

Idem

(3) Where there is a vacancy or vacancies in the board of directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office.

Executive
committee

97.—(1) Where the number of directors of a co-operative is more than six, and if authorized by a by-law, the directors may elect from among their number an executive committee consisting of not fewer than three of whom a majority shall be resident Canadians and may delegate to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors.

Quorum

(2) An executive committee may fix its quorum, which shall be not less than a majority of its members.

(3) No business shall be transacted by an executive committee except at a meeting of its members at which a quorum of the executive committee is present and at which a majority of the members present are resident Canadians. Conduct of business

98.—(1) Every director of a co-operative who has, directly or indirectly, any interest in any contract or transaction to which the co-operative or a subsidiary thereof is or is to be a party, other than a contract or transaction in which his interest is limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the co-operative and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of property by or to the co-operative or a subsidiary thereof, the cost of the property to the purchaser and the cost thereof to the seller, if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such interest or information is within his knowledge or control, and shall not vote and shall not in respect of such contract or transaction be counted in the quorum. Disclosure by directors of interests in contracts

(2) Subsection 1 does not require the disclosure of any interest in any contract or transaction unless, Interest to be material

(a) the interest and the contract or transaction are both material; or

(b) the subject of the contract or transaction is of a type not available to all members of the co-operative.

(3) The declaration required by this section shall be made at the meeting of the directors at which the proposed contract or transaction is first considered, or if the director is not at the date of the meeting interested in the proposed contract or transaction, at the next meeting of the directors held after he becomes so interested, or if the director becomes interested in a contract or transaction after it is entered into, at the first meeting of the directors held after he becomes so interested, or if a contract or a proposed contract or transaction is one that in the ordinary course of the co-operative's business, would not require approval by the directors or shareholders, at the first meeting of the directors held after the director becomes aware of it. When declaration of interest to be made

(4) If a director has made a declaration and disclosure of his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the co-operative, the director, if he was acting honestly and in good Effect of declaration

faith at the time the contract or transaction was entered into, is not by reason only of his holding the office of director accountable to the co-operative or to its members for any profit or gain realized from the contract or transaction, and the contract or transaction, if it was in the best interests of the co-operative at the time the contract or transaction was entered into, is not voidable by reason only of the director's interest therein.

Confirmation
by members

(5) Notwithstanding anything in this section, a director, if he was acting honestly and in good faith, is not accountable to the co-operative or to its members for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction, if it was in the best interests of the co-operative at the time it was entered into, is not by reason only of the director's interest therein voidable,

- (a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose; and
- (b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting.

General
notice of
interest

(6) For the purposes of this section, a general notice to the directors by a director declaring that he is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the co-operative is a sufficient declaration of interest in relation to any contract so made.

Liability of
directors re
purchase of
shares

99.—(1) Where a co-operative acquires any of its shares or repays any of its loans in contravention of this Act or the articles, the directors who voted in favour of or consented to the resolution authorizing the acquisition or repayment are jointly and severally liable to the co-operative to the extent of the amount paid out.

Application
to court

(2) Where a co-operative acquires any of its shares or repays any of its loans in contravention of this Act or the articles,

- (a) any member of the co-operative; or
- (b) where the acquisition or repayment is in contravention of subsection 2 of section 32, subsection 1

of section 67 or section 69, any creditor of the co-operative who was a creditor at the time of the acquisition or repayment,

may apply to the court within two years of the acquisition or repayment and the court may, if it considers it to be just and equitable under the circumstances, make an order making any member whose shares were acquired liable to the co-operative jointly and severally with the directors, to the extent of the amount paid to him.

100. Where any dividend is declared and paid in contra-
vention of section 58,

*Liability
of directors
re dividends*

- (a) the directors who voted in favour of or consented to the resolution authorizing the declaration of the dividend are jointly and severally liable to the co-operative to the extent of the amount of the dividend so declared and paid or such part thereof as renders the co-operative insolvent or diminishes its capital; and
- (b) any member of the co-operative or any creditor of the co-operative who was a creditor at the time of the declaration of the dividend may apply to the court within two years of the declaration, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any member to whom the dividend is paid jointly and severally liable with the directors to the extent of the amount of the dividend paid to him.

101.—(1) A director who was present at a meeting of the board of directors or an executive committee thereof when,

*Consent of
director at
meeting*

- (a) the redemption or purchase of shares of the co-operative is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) the repayment of loans to members is authorized,

shall be deemed to have consented thereto unless,

- (d) his dissent is entered in the minutes of the meeting;
- (e) he files his written dissent with the person acting as secretary of the meeting before its adjournment; or

- (f) he delivers or sends his dissent by registered mail to the co-operative immediately after the adjournment of the meeting,

and within seven days after complying with clause *d*, *e* or *f* he sends a copy of his dissent by registered mail to the Minister.

Idem

(2) A director who voted in favour of a matter referred to in subsection 1 is not entitled to dissent under subsection 1.

Consent of
director
not at
meeting

(3) A director who was not present at a meeting of the board of directors or any executive committee thereof when,

(a) the redemption or purchase of shares of the co-operative is authorized;

(b) the declaration and payment of a dividend is authorized; or

(c) the repayment of loans to members is authorized,

shall be deemed to have consented thereto unless,

(d) he delivers or sends to the co-operative by registered mail his dissent; or

(e) he causes his dissent to be filed with the minutes of the meeting,

within seven days after he becomes aware of the authorization referred to in clause *a*, *b* or *c* and unless, within seven days after complying with clause *d* or *e*, he sends a copy of his dissent by registered mail to the Minister.

Exception to
liability

102.—(1) A director is not liable under section 99 or 100 if, in the circumstances, he discharged his duty to the co-operative in accordance with section 108.

Liability not
excluded

(2) The liability imposed by this Act upon a director is in addition to any other liability that is by law imposed upon him.

Liability of
directors for
wages

R.S.O. 1970,
cc. 263, 147

103. (1) The directors of a co-operative are jointly and severally liable to the employees of the co-operative to whom *The Master and Servant Act* applies for all debts that become due while they are directors for services performed for the co-operative, not exceeding six months wages, and for the vacation pay accrued for not more than twelve months under *The Employment Standards Act* and the regulations thereunder or under any collective agreement made by the co-operative.

(2) A director is liable under subsection 1,

Limitation of
liability

(a) only if,

(i) the co-operative has been sued for the debt within six months after it has become due and execution against the co-operative has been returned unsatisfied in whole or in part, or

(ii) the co-operative has within that period gone into liquidation or has been ordered to be wound up or has made an authorized assignment under the *Bankruptcy Act* (Canada), or a receiving order under the *Bankruptcy Act* (Canada) has been made against it and, in any such case, the claim for the debt has been proved; and

R.S.C. 1970,
c. B-3

(b) he is sued for the debt while he is a director or within two years after he ceases to be a director.

(3) After execution has been so returned against the co-operative, the amount recoverable against the director is the amount remaining unsatisfied on the execution. Idem

(4) If the claim for the debt has been proved in liquidation or winding-up proceedings or under the *Bankruptcy Act* (Canada), a director who pays the debt is entitled to any preference that the creditor paid would have been entitled to or, if a judgment has been recovered for the debt, the director is entitled to an assignment of the judgment. Rights of
director
who pays
the debt

104. The members may, by resolution passed by a majority of the votes cast at a general meeting duly called for that purpose, remove any director before the expiration of his term of office and may, by a majority of the votes cast at the meeting, elect any person in his stead for the remainder of his term. Removal of
directors

Officers

105.—(1) A co-operative shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors. Officers

(2) In the absence of other provisions in that behalf in the articles or by-laws, the directors, Election and
appointment

(a) shall elect the president from among themselves;

(b) shall appoint or elect the secretary; and

(c) may appoint or elect one or more vice-presidents or other officers.

Chairman
of the board

106. A co-operative may by by-law,

(a) provide for the election or appointment by the directors from among themselves of a chairman of the board;

(b) define the duties of the chairman;

(c) assign to the chairman all or any of the duties of the president or of any other officer of the co-operative,

and, if the by-law assigns to the chairman any of the duties of the president, it shall also fix and prescribe the duties of the president.

Qualifica-
tions of
chairman
and president

107. Unless the articles or by-laws otherwise provide, no person shall be the president of a co-operative unless he is a director of the co-operative, but no other officer except the chairman of the board need be a director.

General

Standard of
care of
directors and
officers

108. Every director and officer of a co-operative shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the co-operative, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Validity of
acts of
directors and
officers

109. An act done by a director or by an officer is not invalid by reason only of any defect that is thereafter discovered in his appointment, election or qualification.

Indemnifica-
tion of
directors and
officers

110.—(1) Subject to subsection 2, the by-laws of a co-operative may provide that every director and officer of the co-operative and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the co-operative from and against,

(a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and

- (b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the co-operative.

(2) No director or officer of a co-operative shall be indemnified by the co-operative in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant.

(3) A co-operative may purchase and maintain insurance for the benefit of a director or officer thereof, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of a contravention of section 108.

INSIDERS

111.—(1) Every insider of a co-operative or associate or affiliate of such insider who, in connection with a transaction relating to the securities of the co-operative, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person for any direct loss suffered by such person as a result of the transaction, unless the information was known or ought reasonably to have been known to such person at the time of the transaction, and is also accountable to the co-operative for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of the transaction.

(2) An action to enforce any right created by subsection 1 may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action.

(3) In this section,

(a) “associate”, where used to indicate a relationship with any person, means,

- (i) any corporation of which such person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding,

- (ii) any partner of that person acting by or for the partnership of which they are both partners,
 - (iii) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity,
 - (iv) any spouse, son or daughter of that person, or
 - (v) any relative of such person or of his spouse, other than a relative referred to in subclause iv, who has the same home as such person;
- (b) “insider” or “insider of a co-operative” means any director or senior officer of a co-operative.

Idem

(4) For the purposes of this section, one corporation shall be deemed to be affiliated with another corporation if, but only if, one of them is the subsidiary of the other.

Order to
commence
action

112.—(1) Upon application by any person who was at the time of a transaction referred to in subsection 1 of section 111 or is at the time of the application an owner of securities of the co-operative, the court may, if satisfied that,

- (a) such person has reasonable grounds for believing that the co-operative has a cause of action under section 111; and
- (b) either,
 - (i) the co-operative has refused or failed to commence an action under section 111 within sixty days after receipt of a written request from such person so to do, or
 - (ii) the co-operative has failed to prosecute diligently an action commenced by it under section 111,

make an order, upon such terms as to security for costs and otherwise as to the court seems fit, requiring the Minister to commence or continue an action in the name of and on behalf of the co-operative to enforce the liability created by section 111.

(2) The applicant under subsection 1 shall give to the co-operative and the Minister notice of his application, and the co-operative and the Minister have the right to appear and be heard thereon. Notice

(3) Every order made under subsection 1 shall provide that the co-operative shall co-operate fully with the Minister in the institution and prosecution of the action and shall make available to the Minister all records, documents and other material or information known to the co-operative or reasonably ascertainable by the co-operative relevant to the action. Order to co-operate

RECORDS

113.—(1) Where this Act requires a record to be kept by a co-operative, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device. Records

(2) Where a record is not kept in a bound book, the co-operative shall, Where not in bound book

- (a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and
- (b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the record.

(3) The bound or looseleaf book or, where the record is not kept in a bound or looseleaf book, the information in the form in which it is made available under clause *b* of subsection 2 is admissible in evidence as *prima facie* proof, before and after dissolution of the co-operative, of all facts stated therein. Admissibility of records in evidence

(4) No person shall remove, withhold or destroy information required by this Act or the regulations to be recorded, or, False information

- (a) record or assist in recording any information in a record; or
- (b) make information purporting to be accurate available in a form referred to in clause *b* of subsection 2,

knowing it to be untrue.

114. A co-operative shall cause to be kept the following records: Records

1. A copy of the articles of the co-operative.

2. All by-laws and resolutions, including special resolutions of the co-operative.
3. A register of members and security holders in which is set out the names alphabetically arranged or alphabetically indexed in appropriate categories of,
 - i. in a co-operative with share capital, all persons who are or have been within ten years registered as holders of shares in the co-operative and the address including the street and number, if any, of every such person while a holder, in which are set out also the number and class of shares held by such holder,
 - ii. in a co-operative without share capital, all persons who are or have been within ten years registered as members of the co-operative and the address including the street and number, if any, of every such person while a member,
 - iii. in a co-operative with or without share capital, all persons who are or who have been holders of debt obligations other than debt obligations in bearer form of the co-operative and the address including the street and number, if any, of every such person while a holder in which are set out also the class or series and principal amount of the debt obligations held by such holder.
4. A register of directors in which are set out the names and residence addresses while directors, including the street and number, if any, of all persons who are or have been directors of the co-operative with the several dates on which they have become or ceased to be a director.
5. Proper accounting records in which are set out all financial and other transactions of the corporation including, without limiting the generality of the foregoing, records of,
 - i. all sums of money received and disbursed by the co-operative and the matters with respect to which receipt and disbursement took place,
 - ii. all sales and purchases of the co-operative,
 - iii. the assets and liabilities of the co-operative, and

iv. all other transactions affecting the financial position of the co-operative.

6. The minutes of all proceedings at meetings of members, directors and any executive committee.

115. Every co-operative shall cause to be kept a register of transfers in which all transfers of securities issued by the co-operative in registered form and the date and other particulars of each transfer shall be set out. Register of transfers

116. A co-operative may appoint a registrar and a transfer agent to keep the register of security holders and the register of transfers. Transfer agent

117.—(1) The register of security holders and the register of transfers shall be kept at the head office of the co-operative or at such other office or place in Ontario as is appointed by resolution of the directors. Where registers to be kept

(2) Registration of the transfer of a security of the co-operative in the register of transfers is a complete and valid registration for all purposes. Valid registration

(3) A co-operative, registrar or transfer agent is not liable to produce a security certificate or any document that is evidence of the issue or transfer of the security certificate after six years, Destruction of spent documents

(a) in the case of a share certificate from the date of its cancellation; or

(b) in the case of a certificate representing a debt obligation, from the date of retirement of the whole debt obligation of which the certificate represents a part.

118.—(1) The records mentioned in sections 114 and 115 shall, during the normal business hours of the co-operative, be open to examination by any director and shall, except as provided in section 117 and in subsections 2 and 3 of this section, be kept at the head office of the co-operative. Records open to examination by directors

(2) A co-operative may keep at any place where it conducts its affairs such parts of the accounting records as relate to the operations, business and assets and liabilities of the co-operative carried on, supervised or accounted for at such place, but there shall be kept at the head office of the co-operative or such other place as is authorized under subsection 3 such records as will enable the directors to ascertain quarterly with reasonable accuracy the financial position of the co-operative. Records of account at branch

Order for
removal of
records

(3) Where a co-operative,

- (a) shows, to the satisfaction of the Minister, the necessity of keeping all or any of the records mentioned in subsection 1 at a place other than the head office of the co-operative; and
- (b) gives to the Minister adequate assurance, by surety bond or otherwise, that such records will be open for examination,
 - (i) at the head office or some other place in Ontario designated by the Minister, and
 - (ii) by any person who is entitled to examine them and who has applied to the Minister for such an examination,

the Minister may, by order and upon such terms as he thinks fit, permit the co-operative to keep such of them at such place or places, other than the head office, as he thinks fit and the Minister may by order and upon such terms as he sees fit rescind any such order.

Examination
of records
by members
and creditors

119.—(1) Subject to section 120, the records of a co-operative mentioned in section 114 or 115, other than accounting records, resolutions of directors and the minutes of proceedings at meetings of directors and any executive committee, shall, during the normal business hours of the co-operative and at the place or places where they are kept, be open to examination by the members and creditors or their agents or personal representatives, and any of them may make extracts therefrom.

Idem

(2) No person shall refuse to permit a person entitled thereto to inspect such records or to make extracts therefrom.

Lists of
members
and security
holders

120.—(1) Any member or creditor, upon filing with the co-operative or its agent the affidavit referred to in subsection 2 may,

- (a) make or cause to be made; or
- (b) require a co-operative or its transfer agent to make, upon payment of a reasonable charge therefor,

a list setting out the names alphabetically arranged of all or any members or security holders or both of the co-operative and the addresses of each such person as shown on the records of the co-operative made up to a date not more than ten days before the date of filing the affidavit.

(2) The affidavit referred to in subsection 1 shall be made ^{Form of affidavits} by the applicant and shall be in the following form:

Form of Affidavit

Province of Ontario }
County of

In the matter of
(Insert name of co-operative)

I,.....of the.....of.....

in the.....of.....

make oath and say:

(Where the applicant is a corporation, indicate office and authority of deponent.)

1. I am a member or a creditor of the above-named co-operative.
2. I require the list (or require to make a list) of the members (security holders) of the above-named co-operative.
3. I require the list of members (security holders) only for purposes connected with the above-named co-operative.
4. The list of members (security holders) and the information contained therein will be used only for purposes connected with the above-named co-operative.

SWORN, etc.

(3) Where the applicant is a corporation, the affidavit shall be ^{Idem, where applicant a corporation} made by the president or other officer authorized by resolution of the board of directors of the corporation.

(4) No person shall use a list of all or any of the members ^{Use of list} of a co-operative obtained under this section,

- (a) for the purpose of delivering or sending to all or any of the members advertising or other printed matter relating to securities other than the securities of the co-operative; or
- (b) for any purpose not connected with the co-operative.

(5) Every co-operative or transfer agent shall furnish a list ^{Duty to furnish} in accordance with subsection 1 when so required.

Purposes
of list

(6) Purposes connected with the co-operative include any effort to influence the voting of members or security holders at any meeting thereof.

Trafficking
in lists

121. No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the members of a co-operative.

Power of
court to
correct

122.—(1) Where the name of a person is, without sufficient cause, entered in or omitted from the records of a co-operative other than accounting records, or if default is made or unnecessary delay takes place in entering therein the fact of any person having ceased to be a security holder or member of the co-operative, the person aggrieved, or any security holder or member of the co-operative, or the co-operative itself, may apply to the court for an order that the records be rectified, and the court may dismiss such application or make an order for the rectification of the records and may direct the co-operative to compensate the party aggrieved for any damage he has sustained.

Decision
as to title

(2) Any court may, in any proceeding under this section, decide any question relating to the entitlement of a person who is a party to the proceeding to have his name entered in or omitted from such records whether the question arises between two or more security holders or members or alleged security holders or members, or between any security holders or members or alleged security holders or members and the co-operative.

Trial of
issue

(3) The court may direct an issue to be tried.

Jurisdiction
of court not
affected

(4) This section does not deprive any court of any jurisdiction it otherwise has.

AUDITORS AND FINANCIAL STATEMENTS

Exemption
from audit
provisions

123.—(1) Where in a financial year all the members in a co-operative that,

- (a) has fifteen or fewer members;
- (b) has capital not exceeding \$15,000 as shown on the financial statement of the co-operative for the preceding year; and
- (c) has assets not exceeding \$50,000 and sales or gross operating revenues not exceeding \$100,000, as shown on the financial statement of the co-operative for the preceding year,

consent in writing, the co-operative is exempt from sections 124 and 125, subsections 1 and 2 of section 126, section 127 and clause *b* of subsection 1 and subsection 3 of section 128 in respect of the financial year in which the consent is given.

(2) For the purposes of this section, capital shall be computed by adding together the sums represented by the amounts of, ^{Interpretation} of capital

- (a) member and patronage loans made to the co-operative that are outstanding;
- (b) issued capital determined in accordance with section 29;
- (c) unsecured long-term debt; and
- (d) surplus,

as shown on the financial statement of the co-operative for the preceding year.

124.—(1) The members of a co-operative at their first ^{Auditors} general meeting shall appoint one or more auditors to hold office until the close of the first annual meeting and, if the members fail to do so, the directors shall forthwith make such appointment or appointments.

(2) The members shall at each annual meeting appoint one ^{Idem} or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

(3) The directors may fill any casual vacancy in the office ^{Casual vacancy} of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

(4) The members may, by resolution passed by a majority ^{Removal of auditor} of the votes cast at a general meeting duly called for the purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term.

(5) Before calling a general meeting for the purpose speci- ^{Notice to auditor} fied in subsection 4, the co-operative shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor,

- (a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and
- (b) a copy of all material proposed to be sent to members in connection with the meeting.

Right of
auditor to
make repre-
sentations

(6) An auditor has the right to make to the co-operative, three days or more before the mailing of the notice of the meeting, representations in writing, concerning,

- (a) his proposed removal as auditor;
- (b) the appointment or election of another person to fill the office of auditor; or
- (c) his resignation as auditor,

and the co-operative, at its expense, shall forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting.

Remuner-
ation

(7) The remuneration of an auditor appointed by the members shall be fixed by the members, or by the directors if they are authorized so to do by the members, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

Appointment
by court

(8) If for any reason no auditor is appointed, the court may, on the application of a member, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the co-operative for his or their services.

Notice of
appointment

(9) The co-operative shall give notice in writing to an auditor of his appointment forthwith after the appointment is made.

Notice to
auditor of
proposal to
appoint
another

125.—(1) If, at an annual meeting of members, it is proposed to appoint an auditor, other than the incumbent auditor, the co-operative shall, fifteen days or more before the mailing of the notice of meeting, give to the incumbent auditor a written notice of management's intention not to recommend his re-appointment at the annual meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed.

Right of
incumbent
auditor to
make repre-
sentations

(2) The incumbent auditor has the right to make to the co-operative, three days or more before the mailing of the notice of the meeting, representations in writing concerning the proposal not to reappoint him as auditor, and the co-operative,

at its expense, shall forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting.

126.—(1) No person shall be appointed or act as auditor of a co-operative who is a director, officer or employee, or who has been, during the two years immediately preceding the proposed date of his appointment as auditor, a director, officer or employee of the co-operative or who is a partner, employer or employee of such director, officer or employee or who is a related person to any director or officer of the co-operative. Persons disqualified as auditors

(2) No person shall be appointed to act as auditor of a co-operative if he or any partner or employer of or related person to him transacts a material amount of business with the co-operative. Idem

(3) No person shall be appointed a receiver or a receiver and manager or liquidator of any co-operative of which he or any partner or employer of or a related person to him is the auditor or has been auditor within the two years preceding his appointment as receiver or receiver and manager or liquidator. Auditors not to be appointed receivers, etc.

(4) No person who is appointed a trustee of the estate of a co-operative under the *Bankruptcy Act* (Canada) or any partner or employer of or a related person to him shall be appointed or act as auditor of the co-operative. Trustee in bankruptcy not to be auditor
R.S.C. 1970,
c. B-3

127.—(1) The auditor shall make such examination as will enable him to report to the members as required by subsection 2. Annual audit

(2) The auditor shall make a report to the members on the financial statement, other than the part thereof that relates to the period referred to in subclause ii of clause *a* of subsection 1 of section 128, to be laid before the co-operative at any annual meeting during his term of office and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the co-operative and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. Auditor's report

(3) Where the report under subsection 2 does not contain the unqualified opinion required thereby, the auditor shall state in his report the reasons therefor. Idem

(4) Where facts come to the attention of the officers or directors, Facts discovered after statement

- (a) which could reasonably have been determined prior to the date of the last annual meeting of the members; and
- (b) which if known prior to the date of the last annual meeting of members, would have required a material adjustment to the financial statement presented to the meeting,

the officers or directors shall communicate such facts to the auditor who reported to the members under this section and the directors shall forthwith amend the financial statement and send it to the auditor.

Amendment
of auditor's
report

(5) On the receipt of facts furnished under subsection 4 or from any other source, the auditor shall, if in his opinion it is necessary, amend his report in respect of the financial statement in accordance with subsection 3 and the directors or, if they fail to do so within a reasonable time, the auditor shall mail such amended report to the members.

Idem

(6) If the financial statement contains a statement of changes in net assets or a statement of source and application of funds, the auditor shall include in his report a statement whether in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein.

Idem

(7) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a co-operative are included in the financial statement of the co-operative, the report of the auditor of the co-operative required by subsection 2 may refer to the reports of auditors of one or more of such subsidiaries, but such reference shall not derogate from the duty of the auditor of the co-operative to comply with subsection 2.

Idem

(8) The auditor in his report shall make such statements as he considers necessary,

- (a) if the co-operative's financial statement is not in agreement with its accounting records;
- (b) if the co-operative's financial statement is not in accordance with the requirements of this Act;
- (c) if he has not received all the information and explanations that he has required; or
- (d) if proper accounting records have not been kept, so far as appears from his examination.

(9) The auditor of a co-operative has right of access at all times to all records, documents, accounts and vouchers of the co-operative and is entitled to require from the directors, officers and employees of the co-operative such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. Right of access, etc.

(10) The auditor of a co-operative has right of access at all times to all records, documents, accounts and vouchers of all subsidiaries of the co-operative and is entitled to require from the directors, officers and employees of each such subsidiary such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. Idem

(11) Where a subsidiary referred to in subsection 10 is a corporation to which this Act does not apply, the co-operative shall make available to its auditor the records, documents, accounts and vouchers of that subsidiary and shall require the directors, officers and employees of that subsidiary to make available to its auditor the information and explanation required by subsection 10. Idem

(12) The auditor of a co-operative is entitled to attend any meeting of members of the co-operative and to receive all notices and other communications relating to any such meeting that a member is entitled to receive, and to be heard at any such meeting that he attends on any part of the business of the meeting that concerns him as auditor. Auditor may attend members' meetings

(13) Any member of a co-operative, whether or not he is entitled to vote at meetings of members, may, by notice in writing to the co-operative given five days or more before any meeting of members, require the attendance of the auditor at such meeting at the co-operative's expense, and in such event the auditor shall attend the meeting. Member may require auditor's attendance at members' meeting

(14) At any meeting of members, the auditor, if present, shall answer inquiries directed to him concerning the bases upon which he formed the opinion stated in the report made under subsection 2. Auditors must answer inquiries

128.—(1) The directors shall lay before each annual meeting of members, Information to be laid before annual meeting

(a) a comparative financial statement relating separately to,

(i) the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the

co-operative has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, and

- (ii) the period covered by the financial year next preceding such latest completed financial year, if any,

made up of,

- (iii) a statement of profit and loss for each period,
- (iv) a statement of surplus for each period,
- (v) a statement of patronage returns allocated to members during the year,
- (vi) a statement of source and application of funds for each period, and
- (vii) a balance sheet as at the end of each period;

(b) the report of the auditor to the members; and

(c) such further information respecting the financial position of the co-operative as the articles or by-laws of the co-operative require.

Designation
of
statements

(2) It is not necessary to designate the statements referred to in subsection 1 as the statement of profit and loss, statement of surplus, statement of patronage returns, statement of source and application of funds and balance sheet.

Auditor's
report to
be read

(3) The report of the auditor to the members shall be read at the annual meeting and shall be open to inspection at the meeting by any member.

Statement
of profit
and loss

129.—(1) The statement of profit and loss to be laid before an annual meeting shall be drawn up so as to present fairly the results of the operations of the co-operative for the period covered by the statement and so as to distinguish severally at least,

(a) sales or gross operating revenue;

(b) the operating profit or loss before including or providing for other items of income or expense that are required to be shown separately;

- (c) income from investments in subsidiaries whose financial statements are not consolidated with those of the co-operative;
- (d) income from other investments;
- (e) non-recurring profits and losses of significant amount including profits or losses on the disposal of capital assets and other items of a special nature to the extent that they are not shown separately in the statement of earned surplus;
- (f) any provision for depreciation or for obsolescence or for depletion;
- (g) amounts written off for goodwill or amortization of any other intangible assets to the extent that they are not shown separately in the statement of earned surplus;
- (h) interest on indebtedness initially incurred for a term of more than one year, including amortization of debt discount or premium and expense; and
- (i) taxes on income imposed by any taxing authority,

and shall show the net profit or loss for the financial period.

(2) Notwithstanding subsection 1, items of the nature ^{Idem} described in clauses *f* and *g* of subsection 1 may be shown by way of note to the statement of profit and loss.

130.—(1) The statement of surplus to be laid before an ^{Statement of surplus} annual meeting shall be drawn up so as to present fairly the transactions reflected in the statement and shall show separately a statement of contributed surplus and a statement of earned surplus.

(2) The statement of contributed surplus shall be drawn ^{Contributed surplus} up so as to include and distinguish at least the following items:

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period including,
 - i. the amount of surplus arising from the issue of shares or the reorganization of the co-operative's issued capital, including *inter alia*,

- a. the amount of premiums received on the issue of shares at a premium,
 - b. the amount of surplus realized on the purchase of shares,
 - ii. donations of cash or other property by members, and
 - iii. the amount of membership fees.
 - 3. The balance of such surplus at the end of the financial period.
- (3) The statement of earned surplus shall be drawn up so as to distinguish at least the following items:

Earned
surplus

- 1. The balance of such surplus at the end of the preceding financial period.
- 2. The additions to and deductions from such surplus during the financial period and without restricting the generality of the foregoing at least the following:
 - i. The amount of the net profit or loss for the financial period.
 - ii. The amount of dividends declared on each class of shares.
 - iii. The amount of patronage returns allocated to members.
 - iv. The amount transferred to or from reserves.
- 3. The balance of such surplus at the end of the financial period.

Treatment
of patronage
returns

131. Where a co-operative allocates patronage returns, the statement referred to in subclause v of clause *a* of subsection 1 of section 128 shall be drawn up to distinguish patronage returns according to services or products or groups of products acquired, marketed, handled, dealt in or sold or rendered by the customer or by the co-operative and such statement shall be so drawn as to present fairly the information shown therein for the period and show separately for members and non-members the amount of patronage returns allocated to each service, product or groups of products.

132. The statement of source and application of funds referred to in subclause vi of clause *b* of subsection 1 of section 128 shall be drawn up so as to present fairly the information shown therein for the period, and shall show separately at least,

- (a) funds derived from,
 - (i) current operations,
 - (ii) sale of non-current assets, segregating investments, fixed assets and intangible assets,
 - (iii) issue of debt obligations, including member loans, or other indebtedness maturing more than one year after issue,
 - (iv) issue of shares,
 - (v) membership fees; and
- (b) funds applied to,
 - (i) purchase of non-current assets, segregating investments, fixed assets and intangible assets,
 - (ii) redemption or other retirement of debt obligations or repayment of other indebtedness maturing more than one year after issue,
 - (iii) redemption or other retirement of shares,
 - (iv) payment of dividends,
 - (v) repayment of patronage loans,
 - (vi) payment of cash patronage returns, and
 - (vii) repayment of member loans.

133.—(1) The balance sheet to be laid before an annual meeting shall be drawn up so as to present fairly the financial position of the co-operative as at the date to which it is made up and so as to distinguish severally at least the following:

1. Cash.
2. Debts owing to the co-operative from its directors, officers or members, except debts of reasonable amount

arising in the ordinary course of its business that are not overdue having regard to its ordinary terms of credit.

3. Debts owing to the co-operative, whether on account of a loan or otherwise, from subsidiaries whose financial statements are not consolidated with those of the co-operative.
4. Other debts owing to the co-operative segregating those that arose otherwise than in the ordinary course of its business.
5. Inventory, stating the basis of valuation.
6. Shares, bonds, debentures and other investments owned by the co-operative, except those referred to in paragraph 7, stating their nature and the basis of their valuation and showing separately those that are marketable with a notation of their market value.
7. Securities of subsidiaries whose financial statements are not consolidated with those of the co-operative, stating the basis of valuation.
8. Lands, buildings and plant and equipment, stating the basis of valuation, whether cost or otherwise, and, if valued on the basis of an appraisal, the date of appraisal, the name of the appraiser, the basis of the appraisal value and, if such appraisal took place within five years preceding the date to which the balance sheet is made up, the disposition in the accounts of the co-operative of any amounts added to or deducted from such assets on appraisal and also the amount or amounts accumulated in respect of depreciation, obsolescence and depletion.
9. There shall be stated under separate headings, in so far as they are not written off,
 - i. expenditures on account of future business,
 - ii. any expense incurred in connection with any issue of shares,
 - iii. any expense incurred in connection with any issue of debt obligations, including any discount thereon, and
 - iv. any one or more of the following: goodwill, franchises, patents, copyrights, trade marks

and other intangible assets and the amount, if any, by which the value of any such assets has been written up within a period of five years preceding the date to which the balance sheet is made up.

10. Bank loans and overdrafts.
11. Debts owing by the co-operative, except those referred to in paragraphs 12 and 13, on loans from its directors, officers or members.
12. Debts owing by the co-operative on loans from members, called "member loans" referred to in section 49.
13. Debts owing by the co-operative to members on the compulsory loans of patronage returns referred to in subsection 4 of section 56.
14. Debts owing by the co-operative to subsidiaries whose financial statements are not consolidated with those of the co-operative, whether on account of a loan or otherwise.
15. Other debts owing by the co-operative, segregating those that arose otherwise than in the ordinary course of its business.
16. Liability for taxes, including the estimated liability for taxes in respect of the income of the period covered by the statement of profit and loss.
17. Dividends declared but not paid.
18. Deferred income.
19. Debt obligations issued by the co-operative, stating the interest rate, the maturity date, the amount outstanding and the existence of sinking fund, redemption requirements and conversion rights, if any.
20. The authorized capital, giving the number of each class of shares and a brief description of each such class, and indicating therein any class of shares that is redeemable and the redemption price thereof.
21. The issued capital, giving the number of shares of each class issued and outstanding and the amount

received therefor that is attributable to capital, and showing,

- i. the number of shares of each class issued since the date of the last preceding balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration, and
- ii. where any shares issued before this Act comes into force have not been fully paid,
 - a. the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and
 - b. the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid.

22. Contributed surplus.

23. Earned surplus.

24. Reserves, showing the amounts added thereto and the amounts deducted therefrom during the financial period.

25. The aggregate number of shares of the co-operative purchased and resold since the date of the last preceding balance sheet.

Notes

(2) Explanatory information or particulars of any item mentioned in subsection 1 may be shown by way of note to the balance sheet.

Notes to
financial
statement

134.—(1) There shall be stated by way of note to the financial statement particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of any of the statements with any of those for the preceding period, and the effect, if material, of any such change upon the profit or loss for the period.

Change in
accounting
practice

(2) For the purpose of subsection 1, a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a state-

ment with that for the preceding period, even though such change did not have a material effect upon the profit or loss for the period.

(3) Where applicable, the following matters shall be referred ^{Idem} to in the financial statement or by way of note thereto:

1. The basis of conversion of amounts from currencies other than the currency in which the financial statement is expressed.
2. Foreign currency restrictions that affect the assets of the co-operative.
3. Contractual obligations that will require abnormal expenditures in relation to the co-operative's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts.
4. Material contractual obligations in respect of long-term leases, including, in the year in which the transaction was effected, the principal details of any sale and lease transaction.
5. Contingent liabilities, stating their nature and, where practicable, the approximate amounts involved.
6. Any liability secured otherwise than by operation of law on any asset of the co-operative, stating the liability so secured.
7. Any default of the co-operative in principal, interest, sinking fund or redemption provisions with respect to any issue of its debt obligations or credit agreements.
8. The gross amount of arrears of dividends on any class of shares and the date to which such dividends were last paid.
9. Where a co-operative has contracted to issue shares or has given an option to purchase shares, the class and number of shares affected, the price and the date for issue of the shares or exercise of the option.
10. Where a co-operative has contracted to purchase or resell common shares, the number of shares affected and price and date for the purchase or resale.

11. The aggregate direct remuneration paid or payable by the co-operative and its subsidiaries whose financial statements are consolidated with those of the co-operative to the directors and the senior officers and, as a separate amount, the aggregate direct remuneration paid or payable to such directors and senior officers by the subsidiaries of the co-operative whose financial statements are not consolidated with those of the co-operative.
12. In the case of a co-operative with subsidiaries, the aggregate of any shares in, and the aggregate of any debt obligations of, that co-operative held by a subsidiary corporation whose financial statements are not consolidated with those of the co-operative.
13. The amount of any loans by the co-operative, or by a subsidiary corporation, otherwise than in the ordinary course of business, during the co-operative's financial period, to the directors or officers of the co-operative.
14. Any restriction by the articles or by-laws of the co-operative or by contract on the payment of dividends that is significant in the light of the co-operative's financial position.
15. Any event or transaction, other than one in the normal course of business operations, between the date to which the financial statement is made up and the date of the auditor's report thereon that materially affects the financial statement.
16. The amount of any obligation for pension benefits arising from service before the date of the balance sheet, whether or not such obligation has been provided for in the accounts of the co-operative, the manner in which the co-operative proposes to satisfy such obligation and the basis on which it has charged or proposes to charge the related costs against operations.
17. Brief particulars of any action to which the co-operative is a party commenced under section 68 during the period.
18. In the case of a co-operative that transacts business with non-members,
 - (i) where the amount of business transacted with non-members exceeds 20 per cent, a statement setting out the percentage of such business, or

- (ii) where the amount of business transacted with non-members does not exceed 20 per cent, a statement to this effect.

(4) A note to a financial statement is a part of it.

Idem

(5) In this section, "senior officer" does not include each of the five highest paid employees of a co-operative.

Interpretation of
of senior officer

135.—(1) A co-operative, in this section referred to as "the holding co-operative", may include in the financial statement to be submitted at an annual meeting the assets and liabilities and income and expense of any one or more of its subsidiaries, making due provision for minority interests, if any, and indicating in such financial statement that it is presented in consolidated form.

Consolidated
financial
statement

(2) Where the assets and liabilities and income and expense of any one or more subsidiaries of the holding co-operative are not so included in the financial statement of the holding co-operative,

Non-consolidated
financial
statement

(a) the financial statement of the holding co-operative shall include a statement setting forth,

- (i) the reason why the assets and liabilities and income and expense of such subsidiary or subsidiaries are not included in the financial statement of the holding co-operative,
- (ii) if there is only one such subsidiary, the amount of the holding co-operative's proportion of the profit or loss of the subsidiary for the financial period coinciding with or ending in the financial period of the holding co-operative, or, if there is more than one such subsidiary, the amount of the holding co-operative's proportion of the aggregate profits less losses, or losses less profits, of all the subsidiaries for the respective financial periods coinciding with or ending in the financial period of the holding co-operative,
- (iii) the amount included as income from such subsidiary or subsidiaries in the statement of profit and loss of the holding co-operative and the amount included therein as a provision for the loss or losses of the subsidiary or subsidiaries,

- (iv) if there is only one such subsidiary, the amount of the holding co-operative's proportion of the undistributed profits of the subsidiary earned since the acquisition of the shares of the subsidiary by the holding co-operative to the extent that such amount has not been taken into the accounts of the holding co-operative, or, if there is more than one such subsidiary, the amount of the holding co-operative's proportion of the aggregate undistributed profits of all the subsidiaries earned since the acquisition of their shares by the holding co-operative less its proportion of the losses, if any, suffered by any subsidiary since the acquisition of its shares to the extent that such amount has not been taken into the accounts of the holding co-operative,
 - (v) any qualifications contained in the report of the auditor of any such subsidiary on its financial statement for the financial period ending as aforesaid, and any note or reference contained in that financial statement to call attention to a matter that, apart from the note or reference, would properly have been referred to in such a qualification, in so far as the matter that is the subject of the qualification or note is not provided for by the co-operative's own financial statement and is material from the point of view of its members;
- (b) if for any reason the directors of the holding co-operative are unable to obtain such information as is necessary for the preparation of the statement that is to be included in the financial statement of the holding co-operative, the directors who sign the financial statement shall so report in writing and their report shall be included in the financial statement in lieu of the statement;
- (c) if, in the opinion of the auditor of the holding co-operative, adequate provision has not been made in the financial statement of the holding co-operative for the holding co-operative's proportion,
- (i) where there is only one such subsidiary, of the loss of the subsidiary suffered since acquisition of its shares by the holding co-operative, or

- (ii) where there is more than one such subsidiary, of the aggregate losses suffered by the subsidiaries since acquisition of their shares by the holding co-operative in excess of its proportion of the undistributed profits, if any, earned by any of the subsidiaries since such acquisition,

the auditor shall state in his report the additional amount that in his opinion is necessary to make full provision therefor.

(3) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding co-operative are included in the financial statement of the holding co-operative, true copies of the latest financial statement of the subsidiary or subsidiaries shall be kept on hand by the holding co-operative at its head office and shall be open to examination by the members of the holding co-operative on request during the normal business hours of the holding co-operative.

Copies of
subsidiary
statement

136. Notwithstanding sections 129 to 135, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance.

Insignificant
circum-
stances

137. In a financial statement, the term “reserve” shall be used to describe only,

Reserve

- (a) amounts appropriated from earned surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred;
- (b) amounts appropriated from earned surplus pursuant to the articles or by-laws of the co-operative for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred; and
- (c) amounts appropriated from earned surplus in accordance with the terms of a contract and that can be restored to the earned surplus when the conditions of the contract are fulfilled.

138.—(1) The directors of a co-operative may elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three

Audit
committee

directors, of whom a majority shall not be officers or employees of the co-operative to hold office until the next annual meeting of the members.

Chairman (2) The members of the audit committee shall elect a chairman from among their number.

Review (3) The co-operative shall submit the financial statement to the audit committee for its review and the financial statement shall thereafter be submitted to the board of directors.

Hearing of auditor (4) The auditor has the right to appear before and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

Idem (5) Upon the request of the auditor, the chairman of the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or members.

Right of auditor to be heard (6) The auditor of a co-operative shall be entitled to attend and be heard at meetings of the board of directors of the co-operative on matters relating to his duties as auditor.

Approval by directors **139.**—(1) The financial statement shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign and the auditor's report, unless the co-operative is exempt under section 123, shall be attached to or accompany the financial statement.

Rights of auditor where no audit committee (2) The auditor of a co-operative that has not elected an audit committee for the year to which the financial statement relates, is entitled,

(a) to receive notice of and to attend the meeting of directors called to approve the financial statement under subsection 1; and

(b) to request a meeting of the board of directors of the co-operative to consider any matters the auditor believes should be brought to their attention, and upon his request, the president of the co-operative shall convene such a meeting.

Mailing of financial statement to members **140.**—(1) A co-operative shall, ten days or more before the date of the annual meeting of members, send by prepaid mail to each member at his latest address as shown

on the records of the co-operative a copy of the financial statement and, subject to section 123, a copy of the auditor's report.

(2) The directors of such co-operative shall send by prepaid mail to each such member a copy of any financial statement and auditor's report amended under subsections 4 and 5 of section 127. Idem

141.—(1) A co-operative shall file with the Minister its financial statements and, subject to section 123, a copy of its auditor's report that are required to be mailed by the co-operative to its members. Financial statements to be filed with Minister

(2) The financial statements and auditor's report where required, shall be sent to the Minister on the same date such statements are mailed or required to be mailed by the co-operative to its members, whichever is the earlier. Idem

MAINTENANCE OF CO-OPERATIVE STATUS

142.—(1) Upon the request of the Minister, every co-operative shall furnish to the Minister such information as he may require to enable him, Information to be furnished to Minister

- (a) to compile statistical records and information in such form as the Minister may require;
- (b) to facilitate the carrying on of research projects;
- (c) to establish that all persons to whom this Act applies are not in contravention of this Act; and
- (d) to establish that the business and affairs of the co-operative are being conducted on a co-operative basis.

(2) The Minister or any employee in the Ministry shall not disclose any information contained in a return made under subsection 1, except where that disclosure is necessary for the administration or enforcement of this Act or where the disclosure is required by a court for the purposes of an action, prosecution or other proceeding. Information not to be disclosed

143. Where the Minister is of the opinion that the business and affairs of the co-operative are not being conducted on a co-operative basis, he may, after giving the co-operative an opportunity to be heard, issue a certificate of amendment changing the co-operative into a corporation subject to the provisions of *The Business Corporations Act* and where necessary for the purpose, changing the co-operative into a corporation with share capital. Affairs not conducted on co-operative basis

R.S.O. 1970,
c. 53

Limit to
non-member
business

144.—(1) Where the Minister is of the opinion that a co-operative has for a period of three years or longer, conducted 50 per cent or more of its business with non-members of that co-operative he may after giving the co-operative an opportunity to be heard, order that a certificate of amendment be issued changing the co-operative into a corporation that is subject to the provisions of *The Business Corporations Act* and, where necessary for the purpose, changing the co-operative into a corporation with share capital.

R.S.O. 1970,
c. 53

Idem

(2) For the purposes of subsection 1, the amount of business conducted by a co-operative with a non-member means the value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative, on behalf of or for the non-members expressed as a percentage of the total value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative from, on behalf of, or for all customers during the year.

Idem

(3) For the purposes of computing the amount of business under subsection 2, there shall not be included in the amount of business conducted with non-members, the value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative from, on behalf of or for non-members who are required to conduct business with the co-operative by a marketing plan established under an Act of the Legislature or of the Parliament of Canada.

Members
not to
number
fewer
than five

145.—(1) If a co-operative exercises its corporate powers when its members are fewer in number than five for a period of more than six months after the number has been so reduced, each person who was a member of the co-operative during the time that it so exercised its corporate powers after such period of six months and is aware of the fact that it so exercised its corporate powers is severally liable for the payment of the whole of the debts of the co-operative contracted during such time and may be sued for the debts without the joinder in the action of the co-operative or of any other member.

Saving

(2) A member who has become aware that the co-operative is so exercising its corporate powers may serve a protest in writing on the co-operative and may by registered letter notify the Minister of such protest having been served and of the facts upon which it is based, and such member may thereby and not otherwise, from the date of his protest and notification, exonerate himself from liability.

Notice and
penalty

(3) If after notice from the Minister the co-operative refuses or neglects to bring the number of its members up to five or more, such refusal or neglect may be regarded by the

Minister as sufficient cause for the cancellation of the certificate of incorporation or any certificate issued by him under this Act.

INVESTIGATIONS

146.—(1) Upon application by a member of a co-operative, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the co-operative or the holders of its securities to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as to the court seems fit, appointing an inspector to investigate the affairs and management of the co-operative or any subsidiary of the co-operative, or both, and to audit the accounts and records of the co-operative or any affiliate thereof named in the order. ^{Investigations and audits}

(2) An order may be made under subsection 1 whether or not there has been disclosure to the members of the co-operative of information relating to any matter on the basis of which the order is made. ^{Idem}

(3) Every director, officer, agent, employee, banker and auditor of the co-operative or of any subsidiary of the co-operative named in the order and every other person shall produce for the examination of the inspector all accounts and records of or relating to the co-operative or subsidiary in their custody or control. ^{Production of accounts and records}

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the co-operative or subsidiary in relation to its affairs, management, accounts and records. ^{Examination may be under oath}

(5) The court may, on the application of the inspector, on such terms and conditions as it sees fit, order any person not mentioned in subsection 4 to attend and be examined under oath before the inspector on any matter relevant to the investigation or audit. ^{Court order for examination}

(6) Every director, officer, agent, employee, banker or auditor who refuses to produce any account or record referred to in subsection 3 and every person examined under subsection 4 or 5 who refuses to answer any question related to the affairs and management of the co-operative or any subsidiary is guilty of an offence under section 176, in addition to any other liability to which he is subject. ^{Offences}

(7) The inspector shall make a report to the court and shall forward a copy of the report to the co-operative and any ^{Inspector's report}

subsidiary of the co-operative named in the order and to the person who made the application under subsection 1.

Co-operative
may appoint
inspector
for same
purpose

147.—(1) A co-operative may, by resolution passed at an annual meeting of members or a general meeting of members called for that purpose, appoint an inspector to investigate its affairs and management.

Powers and
duties of
inspector

(2) The inspector appointed under subsection 1 has the same powers and shall perform the same duties as an inspector appointed under section 146 and he shall make his report in such manner and to such persons as the co-operative by resolution of the members directs.

Where
Minister
to appoint
inspector

148.—(1) Notwithstanding anything contained in section 146 or 147, the Minister shall appoint in writing an inspector to investigate and report on the affairs and management of a co-operative or its subsidiaries if 10 per cent of the members of the co-operative request in writing such investigation and show circumstances suggesting that,

- (a) the business of the co-operative or any of its subsidiaries is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the co-operative or any of its subsidiaries are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner oppressive or unfairly prejudicial to or in disregard of the interests of a security holder;
- (c) the co-operative or any of its subsidiaries was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the co-operative or any of its subsidiaries have in connection therewith acted fraudulently or dishonestly.

Idem

(2) The Minister may on his own initiative appoint in writing an inspector to investigate and report on the affairs and management of a co-operative or its subsidiaries if it appears that there exist any of the circumstances mentioned in clause *a*, *b*, *c* or *d* of subsection 1.

Production
of accounts
and records

(3) Every person shall produce for the examination of the inspector all accounts and records in their custody or control which relate to the co-operative or any of its subsidiaries.

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the co-operative or any of its subsidiaries in relation to its affairs, management, accounts and records. Examination may be under oath

(5) Upon an application to the court by the inspector, the court may, on such terms and conditions as it sees fit, order any person not mentioned in subsection 4 to attend and be examined under oath before the inspector on any matter relevant to the investigation. Court order for examination

(6) Every director, officer, agent, employee, banker or auditor who refuses to produce any account or record referred to in subsection 3 and every person examined under subsection 4 or 5 who refuses to answer any question related to the affairs and management of the co-operative or any of its subsidiaries is guilty of an offence under section 176 in addition to any other liability to which he is subject. Offences

(7) The inspector shall deliver the report of his investigation to the Minister and the Minister may forward a copy of the report to the co-operative and any subsidiary of the co-operative investigated. Report to be made to Minister

149. Where it appears from the report of an inspector made under section 146, 147 or 148 that any of the circumstances set out in clause *a*, *b*, *c* or *d* of subsection 1 of section 148 exist, the Minister may, notwithstanding any other remedies available, Remedies

- (a) apply under clause *d* of section 217 of *The Business Corporations Act* to wind up the co-operative by order of the court; R.S.O. 1970, c. 53
- (b) cancel the certificate of incorporation for cause under section 166;
- (c) require, or apply to the court for an order under section 78 requiring, the directors of the co-operative to call a general meeting of members; or
- (d) refer the report of the inspector to the Attorney General.

150. A copy of the report of an inspector appointed under this Act authenticated by the registrar of the court or in the case of an investigation under section 147 or 148 by the inspector is admissible in any legal proceeding and is evidence of the opinion of the inspector in relation to any matter contained in the report. Report admissible in proceedings

REORGANIZATION

Amendment of Articles

Amendments **151.**—(1) A co-operative may, from time to time, amend its articles of incorporation to,

- (a) change its name;
- (b) extend, limit or otherwise vary its objects;
- (c) increase its authorized capital;
- (d) decrease its authorized capital by cancelling shares whether issued or unissued or by reducing the par value of issued or unissued shares;
- (e) increase or decrease the membership fee;
- (f) increase or decrease the minimum amount of member loans;
- (g) redivide its authorized capital into shares of lesser or greater par value;
- (h) redesignate any class of shares;
- (i) reclassify any shares into shares of a different class;
- (j) delete or vary any provision in its articles;
- (k) provide for any other matter or thing that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the co-operative;
- (l) convert it into a co-operative with or without share capital;
- (m) convert it into a corporation to which *The Business Corporations Act* applies.

R.S.O. 1970,
c. 53

Authoriza-
tion

(2) An amendment under subsection 1, except clauses *l* and *m*, shall be authorized by a special resolution.

Idem

(3) Subject to section 152, an amendment under clause *l* or *m* of subsection 1 shall be authorized by a resolution of the board of directors and confirmed by at least three-quarters of the votes cast at a general meeting of the members of the co-operative duly called for that purpose.

(4) If the amendment is to delete or vary a preference, right, condition, restriction, limitation or prohibition attaching to a class of preference shares or to create preference shares, ranking in any respect in priority to or on a parity with an existing class of preference shares, then, in addition to the confirmation required by subsection 2, the resolution is not effective until it has been confirmed,

Additional
authorization
for
variation of
rights of
preference
shares

- (a) by 100 per cent of the holders of the shares of such class or classes of shares in writing; or
- (b) in writing by at least 95 per cent of the holders of the shares of such class or classes of shares holding at least 95 per cent of the issued shares of such class or classes and after twenty-one days notice of the resolution and confirmation has been given by sending the notice to each of the holders of shares of such class or classes to his latest address as shown on the records of the co-operative and only if at the expiration of twenty-one days none of the holders of such class or classes has dissented in writing to the co-operative; or
- (c) if the articles so provide, by at least two-thirds of the votes cast at a meeting of the holders of such class or classes of shares duly called for that purpose or such greater proportion of the votes cast as the articles provide,

and by such additional authorization as the articles provide.

152.—(1) Notwithstanding subsection 3 of section 151, where a co-operative is no longer able to conduct its business and affairs on a co-operative basis by reason of the provisions of an Act of the Legislature or of the Parliament of Canada, the co-operative may apply to the Minister for a certificate of amendment converting the co-operative to a corporation to which *The Business Corporations Act* applies and, where necessary, for the purpose, changing the co-operative into a corporation with share capital.

Conversion
of co-
operative to
corporation

R.S.O. 1970,
c. 53

(2) An application under subsection 1 shall be authorized by special resolution.

Authoriza-
tion

153.—(1) For the purpose of bringing an amendment to the articles into effect, the co-operative shall deliver to the Minister, within six months after the resolution has become effective, articles of amendment in duplicate, executed under the seal of the co-operative and signed by two officers, or by

Articles of
amendment

one director and one officer, of the co-operative and verified by affidavit of one of the officers or directors signing the articles of amendment, setting out,

- (a) the name of the co-operative;
- (b) a certified copy of the resolution;
- (c) that the amendment has been duly authorized as required by subsections 2, 3 and 4 of section 151; and
- (d) the date of the confirmation of the resolution by the members.

Change
of name

(2) Where the articles of amendment are to change the name of the co-operative, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the co-operative is not insolvent.

Decrease
of capital

(3) Where the articles of amendment are to decrease the authorized capital, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the co-operative is not insolvent and that the decrease will not render the co-operative insolvent, and, if required by the Minister, by evidence that establishes to his satisfaction that no creditors object to the amendment.

Pro forma
balance
sheet

(4) Where the articles of amendment are to make any change in the authorized capital, the articles of amendment shall, if required by the Minister, be accompanied by a *pro forma* balance sheet after giving effect to the proposed change.

Certificate of
amendment

154.—(1) If the articles of amendment conform to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles of amendment the word “Filed” and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the co-operative or its agent a certificate of amendment to which he shall affix the other duplicate.

Effect of
certificate

(2) The amendment becomes effective upon the date set forth in the certificate of amendment and the articles of incorporation are amended accordingly.

Restatement of Articles

155.—(1) A co-operative may at any time restate its ^{Restatement of articles} articles of incorporation as theretofore amended.

(2) For the purposes of bringing the restated articles into ^{Filing of restatement} effect, the co-operative shall deliver to the Minister the restated articles in duplicate, executed under the seal of the co-operative and signed by two officers, or by one director and one officer, of the co-operative and verified by affidavit of one of the officers or directors signing the restated articles, setting out,

- (a) all the provisions that are then set out in the original articles of incorporation as theretofore amended; and
- (b) a statement that the restated articles correctly set out without change the corresponding provisions of the original articles as theretofore amended.

(3) If the restated articles of incorporation conform to law, ^{Certificate of restatement} the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the restated articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the co-operative or its agent a restated certificate of incorporation to which he shall affix the other duplicate.

(4) The restated articles of incorporation become effective ^{Effect of certificate} upon the date set forth in the restated certificate and supersede the original articles of incorporation and all amendments thereto.

Amalgamations and Continuations

156.—(1) Any two or more co-operatives may amalgamate ^{Amalgamation} and continue as one co-operative.

(2) The co-operatives proposing to amalgamate shall enter ^{Agreement} into an agreement for the amalgamation, prescribing its terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect, and, in particular the agreement shall set out, as may be applicable,

- (a) the name of the amalgamated co-operative;

- (b) the objects of the amalgamated co-operative;
- (c) the place in Ontario where the head office of the amalgamated co-operative is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district, and giving the street and number, if any;
- (d) the authorized capital of the amalgamated co-operative, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share;
- (e) where there are to be preference shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions applying to them or each class of them;
- (f) the restrictions, if any, to be placed on the transfer of member loans or of its shares or any class thereof of the amalgamated co-operative;
- (g) the authorized loan capital of the amalgamated co-operative;
- (h) the amount of membership fee and the classes of membership, if any, setting forth the designation of and the terms and conditions attaching to each class of membership in the amalgamated co-operative;
- (i) the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the amalgamated co-operative;
- (j) the time and manner of election of the subsequent directors of the amalgamated co-operative;
- (k) whether or not the by-laws of the amalgamated co-operative are to be those of one of the amalgamating co-operatives, and, if not, a copy of the proposed by-laws of the amalgamated co-operative;
- (l) the manner in which the issued shares of each of the amalgamating co-operatives are to be converted into issued shares of the amalgamated co-operative;
- (m) the manner of conversion of the loan and share capital, as the case may be, of the amalgamating

co-operatives into the loan and share capital, as the case may be, of the amalgamated co-operative ;

- (n) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated co-operative ;

(3) Where shares of one of the amalgamating co-operatives are held by or on behalf of another of the amalgamating co-operatives, the amalgamation agreement shall provide for the cancellation of such shares upon the amalgamation becoming effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated co-operative. Shares of amalgamating co-operative held by another

(4) The member or patronage loans, if any, of the amalgamating co-operatives shall represent liabilities of the amalgamated co-operative. Treatment of patronage loans

(5) An amalgamation agreement is not effective until approved by a special resolution of each of the amalgamating co-operatives. Approval of agreement

(6) Where the carrying out of the amalgamation agreement would result in the deletion or variation of a preference, right, condition, restriction, limitation or prohibition attaching to a class of issued preference shares of any of the amalgamating co-operatives or in the creation of preference shares of the amalgamated co-operative ranking in any respect in priority to, or on a parity with, any existing class of preference shares of any of the amalgamating co-operatives, the agreement is not effective until it is approved in the manner provided by subsection 4 of section 151 in addition to the approval required by subsection 4. Approval by preference shareholders

157.—(1) For the purpose of bringing an amalgamation into effect, the amalgamating co-operatives shall, within six months after the amalgamation agreement has become effective, deliver to the Minister articles of amalgamation in duplicate executed under the seal of each of the amalgamating co-operatives and signed by two officers, or by one director and one officer, of each of the amalgamating co-operatives and verified by affidavit of one of the officers or directors signing the articles of amalgamation for each amalgamating co-operative, setting out, Filing of articles of amalgamation

- (a) the names of each of the amalgamating co-operatives ;

- (b) a certified copy of the amalgamation agreement;
- (c) that the agreement has been duly approved as required by section 156; and
- (d) the dates on which the amalgamation agreement was approved by the members of each of the amalgamating co-operatives.

Evidence of
solvency

(2) The articles of amalgamation shall be accompanied by evidence that establishes to the satisfaction of the Minister that each of the amalgamating co-operatives is not insolvent and, if required by the Minister, a *pro forma* balance sheet after giving effect to the proposed amalgamation.

Issuance of
certificate of
amalgama-
tion

(3) If the articles of amalgamation conform to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the amalgamated co-operative or its agent a certificate of amalgamation to which he shall affix the other duplicate.

Effect of
certificate

(4) Upon the date set forth in the certificate of amalgamation,

- (a) the amalgamation becomes effective and the amalgamating co-operatives are amalgamated and continue as one co-operative under the terms and conditions prescribed in the amalgamation agreement;
- (b) the amalgamated co-operative possesses all the property, rights, privileges and franchises and is subject to all liabilities, contracts, disabilities and debts of each of the amalgamating co-operatives;
- (c) the issued capital of the amalgamated co-operative is, subject to the decrease provided for in subsection 3 of section 156, equal to the aggregate of the issued capital of each of the amalgamating co-operatives immediately before the amalgamation becomes effective; and
- (d) the articles of incorporation of each of the amalgamating co-operatives are amended to the extent

necessary to give effect to the terms and conditions of the amalgamation agreement.

158.—(1) A corporation incorporated under the laws of any jurisdiction other than Ontario may, if it appears to the Minister to be thereunto authorized by the laws of the jurisdiction in which it was incorporated, apply to the Minister for a certificate continuing it as if it had been incorporated under this Act, and the Minister may issue the certificate of continuation on application supported by such material as appears satisfactory, and the certificate may be issued on such terms and subject to such limitations and conditions and contain such provisions as appear to the Minister to be fit and proper. Certificate of continuation

(2) Upon the date set forth in a certificate of continuation issued under subsection 1, this Act applies to the corporation to the same extent as if it had been incorporated under this Act. Effect of certificate

159.—(1) A co-operative may, if authorized by a special resolution, by the Minister and by the laws of any other jurisdiction, apply to the proper officer of that other jurisdiction for an instrument of continuation continuing the co-operative as if it had been incorporated under the laws of that other jurisdiction. Transfer of Ontario co-operative

(2) This Act ceases to apply to the co-operative on and after the date on which the co-operative is continued under the laws of the other jurisdiction and the co-operative shall file with the Minister a copy of the instrument of continuation certified by the proper officer of the other jurisdiction authorized to certify such documents. Notice

(3) This section applies only in respect of a jurisdiction that has legislation in force that permits corporations incorporated under its laws to apply for an instrument of continuation under the laws of Ontario. Application

160. All rights of creditors against the property, rights and assets of a co-operative amalgamated under section 156 or continued under section 158 and all liens upon its property, rights and assets are unimpaired by such amalgamation or continuation, and all debts, contracts, liabilities and duties of the co-operative thenceforth attach to the amalgamated or continued co-operative and may be enforced against it. Rights of creditors preserved

DISSOLUTION

161. Sections 201 to 246, except clause *a* of subsection 1 of section 231, of *The Business Corporations Act* apply, *mutatis mutandis*, to co-operatives, and for the purpose a reference Winding up
R.S.O. 1970,
c. 53

therein to a corporation shall be deemed to be a reference to a co-operative and a reference therein to a shareholder shall be deemed to be a reference to a member.

Distribution
of property

162.—(1) On any distribution of the property of a co-operative, member loans and patronage returns that are lent to the co-operative rank after the ordinary debts.

Distribution
of property
upon
dissolution

(2) The articles of a co-operative may provide that, upon the dissolution of the co-operative and after the payment of all debts and liabilities, including any declared and unpaid dividends and the amount paid up on outstanding shares, if any, the remaining property of the co-operative or any part thereof may be distributed or disposed of,

- (a) equally among the members irrespective of the number of shares or amount of loans, if any, held or made by a member ;
- (b) among the members at the time of dissolution on the basis of patronage returns accrued to such members during the five fiscal years immediately preceding the dissolution or after the date of incorporation ; or
- (c) to charitable organizations.

Idem

(3) In the absence of any provisions in the articles, upon the dissolution of the co-operative, the whole of its remaining property shall be distributed equally among the members irrespective of the number of shares or amount of loans, if any, held or made by a member.

Voluntary
dissolution

163. A co-operative may be dissolved upon the authorization of,

- (a) a majority of the votes cast at a general meeting of the members of the co-operative duly called for the purpose or by such other proportion of the votes cast as the articles provide, but such other proportion shall not be less than 50 per cent of all the members entitled to vote at the meeting ;
- (b) the consent in writing of all the members entitled to vote at such meeting ; or
- (c) all its incorporators or their personal representatives at any time within two years after the date set forth in its certificate of incorporation where the co-operative has not commenced business and has not issued any shares or received any membership fees or loans.

Articles of
dissolution
where
co-operative
active

164.—(1) For the purpose of bringing the dissolution authorized under clause *a* or *b* of section 163 into effect, the co-operative shall deliver to the Minister within one year

after the authorization, articles of dissolution in duplicate, executed under the seal of the co-operative and signed by two officers or by one director and one officer, of the co-operative and verified by affidavit of one of the officers or directors signing the articles of dissolution, setting out,

- (a) the name of the co-operative;
- (b) that its dissolution has been duly authorized under clause *a* or *b* of section 163;
- (c) that it has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection 3 or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;
- (d) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute among its members or that it has distributed its remaining property in accordance with section 162 or in accordance with subsection 4 where applicable;
- (e) that there are no proceedings pending in any court against it; and
- (f) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its principal place of business in Ontario or, if it does not have a place of business in Ontario, where it has its head office.

(2) For the purpose of bringing a dissolution authorized under clause *c* of section 163 into effect, the co-operative shall deliver to the Minister articles of dissolution in duplicate, signed by all its incorporators or their personal representatives and verified by affidavit of one of them setting out,

Articles of
dissolution
where co-
operative
never active

- (a) the name of the co-operative;
- (b) the date set forth in its certificate of incorporation;
- (c) that the co-operative has not commenced business;
- (d) that none of its shares has been issued;
- (e) that no membership fees or loans have been received;

- (f) that dissolution has been duly authorized under clause *c* of section 163;
- (g) that it has no debts, obligations or liabilities;
- (h) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute or that it has distributed its remaining property to the persons entitled thereto;
- (i) that there are no proceedings pending in any court against it; and
- (j) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office.

Where
creditor
unknown

(3) Where a co-operative authorizes its dissolution and a creditor is unknown or his whereabouts is unknown, the co-operative may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and such payment shall be deemed to be due provision for the debt for the purposes of clause *c* of subsection 1.

Where
member or
shareholder
unknown

(4) Where a co-operative authorizes its dissolution and a member is unknown or his whereabouts is unknown, it may, by agreement with the Public Trustee, deliver or convey his share of the property to the Public Trustee to be held in trust for him, and such delivery or conveyance shall be deemed to be a distribution to that member for the purposes of the dissolution.

Power to
consent

(5) If the property delivered or conveyed to the Public Trustee under subsection 4 is in a form other than cash, the Public Trustee may at any time, and within ten years after such delivery or conveyance shall, convert it into cash.

Payment
to person
entitled

(6) If the amount paid under subsection 3 or the property delivered or conveyed under subsection 4 or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled thereto within ten years after it was so delivered, conveyed or paid, it shall be delivered, conveyed or paid to him, but, if not so claimed, it vests in the Public Trustee for the use of Ontario, and, if the person beneficially entitled thereto at any time thereafter establishes his right thereto to the satisfaction of the Lieutenant Governor in Council, an amount equal to the amount so vested in the Public Trustee shall be paid to him.

165.—(1) If the articles of dissolution conform to law, the Minister shall, when all prescribed fees have been paid and all taxes payable by the co-operative to the Treasurer of Ontario have been paid, Certificate of dissolution

- (a) endorse on each duplicate of the articles of dissolution the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the co-operative or its agent a certificate of dissolution to which he shall affix the other duplicate.

(2) The dissolution becomes effective and the co-operative is dissolved upon the date set forth in the certificate of dissolution. Effect of certificate

166. Where sufficient cause is shown to the Minister, he may, after he has given the co-operative an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any certificate issued by him under this Act, and, Cancellation of certificate, etc., by Minister

- (a) in the case of the cancellation of a certificate of incorporation, the co-operative is dissolved on the date fixed in the order;
- (b) in the case of the cancellation of any other certificate, the matter that became effective upon the issuance of the certificate ceases to be in effect from the date fixed in the order.

167.—(1) Where a co-operative is in default in filing an annual return or financial statement for a period of two years, the Minister may give notice, by registered mail to the co-operative or by publication once in *The Ontario Gazette*, that an order dissolving the co-operative will be issued unless the co-operative files the annual return or financial statement within one year after the giving of the notice. Notice of dissolution

(2) Upon default in compliance with the notice given under subsection 1, the Minister may by order cancel the certificate of incorporation and, subject to subsection 3, the co-operative is dissolved on the date fixed in the order. Dissolution for default

(3) Where a co-operative is dissolved under subsection 2, the Minister, on the application of any interested person immediately before the dissolution, made within two years after the date of dissolution, may in his discretion by order, on such Revival

terms and conditions as he sees fit to impose, revive the co-operative, and thereupon the co-operative, subject to the terms and conditions of the order and to any rights acquired by any person after its dissolution, is restored to its legal position, including all its property, rights, privileges and franchises, and is subject to all its liabilities, contracts, disabilities and debts, as at the date of its dissolution, in the same manner and to the same extent as if it had not been dissolved.

Suits after
dissolution

168.—(1) Notwithstanding the dissolution of a co-operative under section 165, 166 or 167,

- (a) any action, suit or other proceeding commenced by or against the co-operative before its dissolution may be proceeded with as if the co-operative had not been dissolved;
- (b) any action, suit or other proceeding may be brought against the co-operative within two years after its dissolution as if the co-operative had not been dissolved; and
- (c) any property that would have been available to satisfy any judgment, order or other decision if the co-operative had not been dissolved remains available for such purpose.

Service after
dissolution

(2) For the purposes of this section, the service of any process on a co-operative after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Ministry as being a director or officer of the co-operative before the dissolution.

Liability of
members to
creditors

169.—(1) Notwithstanding the dissolution of a co-operative, each of the members among whom its property has been distributed remains liable to its creditors to the extent of the amount received by him upon the distribution, and an action in a court of competent jurisdiction to enforce such liability may be brought against him within two years from the date of the dissolution and not thereafter.

Action
against one
member as
representing
class

(2) Where there are numerous members, the court referred to in subsection 1 may permit an action to be brought against one or more members as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such members as are found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined.

170. Subject to section 168, any real or personal property of a co-operative that has not been disposed of at the date of its dissolution is forfeit to the Crown. Forfeiture of undispensed property

171. At the same time as a co-operative is required to file its financial statements with the Minister under subsection 2 of section 141, the co-operative shall also file an annual return in such form as the regulations prescribe. Annual return

GENERAL

172.—(1) Subject to the articles or by-laws of a co-operative, Notice to directors and members

(a) a notice or other document required to be given or sent by a co-operative to a member or director may be delivered personally or sent by prepaid mail addressed to the member or director at his latest address as shown on the records of the co-operative; and

(b) a notice or other document sent by mail by a co-operative to a member or director shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail.

(2) Where notices or other documents required by this Act, the articles or by-laws to be given or sent by a co-operative to a member have been mailed to the member at his latest address as shown on the records of the co-operative and where, on three consecutive occasions, notices or other documents have been returned by the Post Office to the co-operative, the co-operative is not required to mail to the member any further notices or other documents until such time as the co-operative receives written notice from the member requesting that notices and other documents be sent to the member at a specified address. Undelivered mail

(3) Except where otherwise provided in this Act, a notice or document required to be given or sent to a co-operative may be sent to the co-operative by prepaid mail at its head office as shown on the records of the Ministry and shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. Notice to co-operative

(4) Where a notice is required by this Act to be given to any person, the giving of the notice may be waived or the time for the notice may be waived or abridged with the consent in writing of such person, whether before or after the time prescribed. Waiver of notice and abridgement of time

Offence,
false
statement

173.—(1) Every person who makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omission of which makes the statement false or misleading is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person is guilty of an offence under subsection 1 if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

Offence,
failure
to file

174.—(1) Every person who fails to file with the Minister any document required by this Act to be filed with him is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or, if such person is a corporation, to a fine of not more than \$20,000.

Idem

(2) Where a corporation is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000.

Consent

175. No proceeding under section 173 or 174 shall be commenced except with the consent or under the direction of the Minister.

Offence,
general

176.—(1) Except where otherwise provided, every person who commits an act contrary to or fails or neglects to comply with any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or, if such person is a corporation, to a fine of not more than \$10,000.

Idem

(2) Where a corporation is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in the offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000.

Limitation

177.—(1) No proceeding under section 173 or 174 or under section 176 for a contravention of section 118 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Minister as certified by him.

(2) Subject to subsection 1, no proceeding for an offence ^{Idem} under this Act or the regulations shall be commenced more than one year after the time when the subject-matter of the offence arose.

178. Where a co-operative or a director, officer or employee ^{Order for compliance} of a co-operative does not comply with any provision of this Act, the articles or the by-laws of the co-operative, the Minister or a member or a creditor of the co-operative, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, may apply to the court for an order directing the co-operative, director, officer or employee, as the case may be, to comply with such provision, and upon such an application the court may make such order or such other order as the court thinks fit.

179.—(1) The Minister may require any fact relevant to the performance of his duties under this Act or the regulations ^{Proof by affidavit} to be verified by affidavit or otherwise.

(2) For the purpose of holding a hearing under this Act, ^{Oaths at hearings} the Minister may administer oaths to witnesses and require them to give evidence under oath.

180. The Minister shall cause notice to be published forth- ^{Publication of notices in The Ontario Gazette} with in *The Ontario Gazette*,

(a) of the issue of every certificate under section 6, 9, 154, 155, 157, 158 or 165;

(b) of the issue of every order under section 118, 166 or 167;

(c) of the filing of a certified copy of an order under subsection 6 of section 215 or subsection 2 of section 228 of *The Business Corporations Act*;

R.S.O. 1970,
c. 53

(d) of the filing of a notice by a liquidator under subsection 2 of section 215 of *The Business Corporations Act*.

181.—(1) Upon payment of the prescribed fee, any person ^{Searches} is entitled to examine any document filed with or issued by the Minister under this Act, and to make extracts therefrom.

(2) Upon payment of the prescribed fee, the Minister shall ^{Certifications by Minister} furnish any person with a certificate as to whether or not a document has been filed with or issued by him under this Act or any predecessor thereof or with a certified copy of any such document.

Execution of
certificates
of Minister

182.—(1) Where this Act requires or authorizes the Minister to issue a certificate or certify any fact, the certificate shall be issued under the seal of the Minister and shall be signed by him or by such officer of the Ministry as is designated by the regulations.

Certificates
as evidence

(2) Any certificate purporting to be under the seal of the Minister and signed by a person authorized by or under subsection 1, or any certified copy, is receivable in evidence in any action, prosecution or other proceeding as *prima facie* proof of the facts so certified without proof of the seal or of the signature or the official position of the person appearing to have signed the certificate.

Notice of
refusal
to file

183.—(1) Where the Minister refuses to file any articles or any other document required by this Act to be filed by him before it becomes effective, he shall give written notice to the person who delivered the articles or other document of his refusal, specifying the reasons therefor.

Failure to
act deemed
refusal

(2) Where, within six months after the delivery to the Minister of articles or other document referred to in subsection 1, the Minister has not filed or refused to file such articles or other document, he shall be deemed for the purposes of section 184 to have refused to file it.

Appeal from
Minister

184.—(1) Any person who feels aggrieved by a decision of the Minister to,

- (a) refuse to file articles or any other document or to issue any certificate required by this Act to be filed or issued;
- (b) issue or refuse to issue a certificate of amendment under subsection 2, 3 or 4 of section 9;
- (c) issue a certificate of amendment under section 143, 144 or 152;
- (d) issue an order under section 166,

may appeal the decision to the Supreme Court.

Certificate
of Minister

(2) The Minister shall certify to the Registrar of the Supreme Court,

- (a) the decision of the Minister, together with a statement of the reasons therefor;
- (b) the record of any hearing; and

- (c) all written submissions to the Minister or other material that is relevant to the appeal.

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. Representation

(4) Where an appeal is taken under this section, the Supreme Court may by its order direct the Minister to make such decision or to do such other act as the Minister is authorized and empowered to do under this Act and as the court thinks proper, having regard to the material and submissions before it and to this Act, and the Minister shall make such decision or do such act accordingly. Order of court

(5) Notwithstanding an order of the Supreme Court, the Minister has power to make any further decision upon new material or where there is a material change in the circumstances, and every such decision is subject to this section. Minister may make further decision

185. An appeal lies to the Court of Appeal from any order made by the court under this Act. Appeal from court

186. The Lieutenant Governor in Council may make regulations respecting any matter that he considers necessary relating to the incorporation, conduct and dissolution of co-operatives including, without limiting the generality of the foregoing, regulations, Regulations

- (a) respecting names, objects, authorized capital, the form and contents of offering statements, membership, the designations, preferences, rights, conditions, restrictions, limitations, or prohibitions attaching to shares or classes of shares or any other matter pertaining to articles or the filing thereof;
- (b) requiring the payment of fees for any matter that the Minister is required or authorized to do under this Act, and prescribing the amounts thereof;
- (c) prescribing any matter required by this Act to be prescribed by the regulations;
- (d) designating officers of the Ministry for the purposes of paragraph 4 of subsection 1 of section 1 and section 182.

187.—(1) For three years after this Act comes into force any provision in the letters patent, supplementary letters patent or by-laws and any special resolution of the co-operative that was valid immediately before this Act comes Continuance of letters patent, etc.

into force, except a provision that contravenes section 110, continues to be valid and in effect but any additions or amendments to or deletions from any provision in the letters patent, supplementary letters patent or by-laws of a co-operative shall be made in accordance with this Act.

Continuance
re shares
not fully
paid
R.S.O. 1970,
c. 89.

(2) For three years after this Act comes into force the provisions of *The Corporations Act* relating to the liability of the holder of shares that are not fully paid and to the enforcement of such liability continue to apply in respect of shares that are not fully paid.

Commence-
ment

188. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

189. This Act may be cited as *The Co-operative Corporations Act, 1973*.

The Co-operative Corporations Act, 1973

1st Reading

October 2nd, 1973

2nd Reading

3rd Reading

THE HON. J. T. CLEMENT
Minister of Consumer and
Commercial Relations

(Government Bill)

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BILL 185

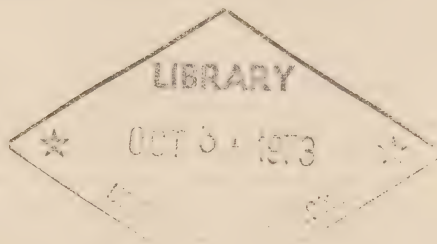
Publications
Government Bill

-B 56

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

The Co-operative Corporations Act, 1973

THE HON. J. T. CLEMENT
Minister of Consumer and Commercial Relations



(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTE

The purpose of this Bill is to provide a self-contained, comprehensive and exclusive code of the corporate law applicable to co-operatives. This Bill deals with the incorporation, operation, management and dissolution of co-operatives both with and without share capital in the light of recommendations made by the 1971 Report on Co-operatives by the Select Committee on Company Law.

Among the major provisions of the Bill are the following:

1. Provision is made for the appointment of a Director of Co-Operative Services responsible for administering the legislation affecting co-operatives. (Section 2).
2. Procedure for the incorporation of a co-operative is substantially the same as that under *The Business Corporations Act*. Incorporation of a co-operative is made a matter of right. (Sections 4, 5 and 6).
3. The use of the word "co-operative" or its abbreviation by a partnership, organization, society or association is prohibited. (Section 7(3)).
4. The present legislation requiring by-laws of a co-operative to be filed with the provincial authority is eliminated. Co-operatives will continue to file their financial statements in an office of public record. (Section 141).
5. A co-operative may be required to furnish information to the Director of Co-operative Services upon his request. (Section 142.)
6. A co-operative is required to conduct a minimum of 50 per cent of its business with its members, calculated on a three year running average. The Minister may, after a hearing, order the conversion of a co-operative into a business corporation if the co-operative fails to transact the minimum amount of member business. (Section 144).
7. The Minister is empowered on his own initiative, and required upon the request of 10 per cent of the members, to investigate the affairs of a co-operative. If it is determined that the affairs of the co-operative are not being conducted in accordance with the Act, the Minister is empowered to commence proceedings for the winding up of the co-operative, to cancel its certificate of incorporation or to refer the report of the inspection to the Attorney General. (Section 148).
8. Admission to membership in a co-operative is made a matter for action by the board of directors. The Act contains no statement or provision on the matter of open membership. (Section 61(2)).
9. The transfer of membership is required to be approved by the board of directors. (Sections 40 and 62).
10. Provision is made for the withdrawal by a member from the co-operative. The member may elect to leave all or part of his investment in the co-operative or may require the co-operative to repay his investment. The co-operative is required to repay that investment, except term loans, within six months. In certain circumstances the period for repayment may be extended over a period of not more than five years. (Section 64).

11. A co-operative may expel a member by resolution of the board of directors where that member is given notice of a hearing, the grounds upon which it is sought to expel him and the right to appear at that meeting. A person expelled is given the right to appeal to the membership of the co-operative at the next annual or general meeting. An expelled member's investment must be repaid by the co-operative within one year of expulsion. (Section 66).
12. No change is made in the principle of one member, one vote. Voting by proxy continues to be prohibited. No change is made in respect of delegate voting. (Sections 76 and 24).
13. No limit is imposed on the size of a member's investment in the co-operative.
14. Persons of the age of sixteen years may be admitted as members of the co-operative and for purposes of contracts with the co-operative, become *sui juris*. (Section 63).
15. The minimum number of members of a co-operative is set at five. (Sections 5(1) and 145).
16. Provisions drawn from *The Business Corporations Act* dealing with representative actions on behalf of the co-operative, requisitions of by-laws or resolutions, circulation of members' resolutions, requisition for members' meeting and requisition of members' meeting by court order are introduced. (Sections 66, 70, 71, 79 and 80).
17. Dividends payable by a co-operative with share capital are limited to 8 per cent. The interest rate payable on loans by a co-operative without share capital is fixed at 8 per cent. This same limit applies to the interest rate on compulsory loans of patronage returns. (Sections 54, 58(2), 49(1) and 56(4)).
18. The interest rate payable on loans, not representing loans made as a condition of membership or compulsory investment, is not limited. (Section 49(2)).
19. The role of the board of directors is defined as to manage or supervise the affairs of the co-operative. The minimum number of directors is fixed at five. A majority of these must be resident Canadians as defined. (Sections 96(1), 85(2) and 85(3)).
20. Co-operatives which are now in existence are given a period of two years during which to bring the number of their directors to five. (Section 88(2)).
21. A director must be a member of the co-operative at the time of his election and throughout his term of office. A person who is a director, officer or shareholder of a corporate member of the co-operative may also be a director of that co-operative. The co-operative may enact a by-law to require directors to conduct a minimum annual volume of business with the co-operative. (Sections 87 and 21 (d)).
22. Cumulative voting for directors is not permitted. (Section 91).
23. The standard of care, diligence and skill imposed on directors and officers of a co-operative is the same as that imposed upon directors and officers of a business corporation by section 144 of *The Business Corporations Act*. (Section 108).
24. The disclosure of interest in contracts by directors of a co-operative is of the same as that required of directors of a business corporation.

- A director of a co-operative is not required to disclose his interest in a contract that is of a type available to all members of the co-operative. (Section 98).
25. Insiders of a co-operative are not required to file insider trading reports. However, insiders are liable to compensate any person for any direct loss suffered by such a person as a result of an insider transaction. (Section 111).
 26. A director is subject to removal before the expiry of his term by resolution passed by a majority of the members at a general meeting. (Section 104).
 27. Subject to a solvency test, a co-operative may repurchase its issued shares. The shares may be cancelled by the board of directors at the time of purchase or held for resale. (Section 32).
 28. Provisions substantially the same as those of *The Business Corporations Act* dealing with the appointment of auditors and the annual audit are introduced. Persons related or associated with the auditor of a co-operative may not be appointed as receiver or trustee in bankruptcy for the co-operative. (Sections 124 and 126).
 29. Directors are empowered but not required to elect an audit committee. If an audit committee is not elected, the auditor is entitled to receive notice of and to attend meetings of directors at which the financial statements are to be approved and upon the request of the auditor the co-operative shall convene a meeting of directors to consider any matters the auditor wishes to bring to their attention. (Sections 138 and 139(2)).
 30. Unless a co-operative has fifteen or fewer members, capital not exceeding \$15,000, assets not exceeding \$50,000 or sales not exceeding \$100,000 and unless all members consent in writing, the co-operative must have its financial statements audited. (Section 123).
 31. The financial disclosure requirements applicable to co-operatives with and without share capital are parallel. The reporting requirements are as much as possible the same as for a business corporation. Certain amendments to the present financial disclosure requirements are made for patronage returns and member loans. The financial statements must contain a note referring to the percentage of non-member business transacted during the year. (Sections 127 to 137).
 32. Where a co-operative has more than fifteen members, before it may issue any securities, the co-operative must file and obtain a receipt for an offering statement. This offering statement must provide full, true and plain disclosure of all material facts relating to the securities proposed to be issued. Notice is required to be given of any material change. This offering statement is open to inspection by the public at the office of the Ministry and must be made available at the head office of the co-operative during normal business hours. The material to be disclosed by this offering statement will be set out in regulations. (Sections 34 to 38).
 33. Where the co-operative is authorized to do so by resolution of the board of directors and where it is necessary to enable the co-operative to improve its services to its members, the co-operative may acquire and hold securities in any other corporation having objects in whole or in part similar to those of the co-operative. (Section 15(2) par. 5).

34. While no special provision is made for direct charge co-operatives, they are exempted from the general provisions relating to distribution of net surplus. (Sections 1(1) par. 10 and 55(1)).
35. Where a co-operative by operation of a compulsory marketing plan is prevented from allocating patronage returns to members, provision is made to deem deliveries made by members to the marketing board to have been made to the co-operative. Where a marketing plan otherwise operates to deprive a co-operative of its ability to deal directly with its members, the Minister may upon application by the co-operative convert it to a business corporation. (Sections 55(5) and 143).
36. A co-operative, where empowered by by-law, may make percentage deductions according to volume from amounts due to members from the marketing of their produce through the co-operative, and retain this money as compulsory loans to the co-operatives upon such terms as the by-law provides. The maximum rate of interest on these compulsory loans is set at 8 per cent. (Section 57).
37. The minimum par value of co-operative shares is reduced from \$5.00 to \$1.00. (Section 25(2)).
38. Co-operative loan and share certificates must set out the co-operative name and the words "a co-operative incorporated under the law of the Province of Ontario". The words "Transfer of these shares is restricted" must be noted conspicuously on the certificate. (Section 46).
39. Co-operatives may dissolve by filing articles of dissolution. The sections of *The Business Corporations Act* dealing with winding up are made applicable to the winding up of co-operatives. (Sections 161 to 165).
40. Non-conforming provisions in the letters patent and by-laws of co-operatives now in existence continue to be valid for 3 years after the coming into force of this Bill. (Section 187).

BILL 185

1973

The Co-operative Corporations Act, 1973

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

1. “articles of incorporation” or “articles” means the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which a co-operative is incorporated, and includes any amendments thereto;
2. “authorized capital” means the authorized capital as determined under section 25;
3. “certificate of incorporation” includes letters patent, a special Act or any other instrument by which a co-operative is incorporated;
4. “certified copy” means,
 - i. in relation to a document of a co-operative, a copy of the document certified to be a true copy under the seal of the co-operative and signed by an officer thereof,
 - ii. in relation to a document issued by a court, a copy of the document certified to be a true copy under the seal of the court and signed by the registrar or clerk thereof,
 - iii. in relation to a document in the custody of the Ministry, a copy of the document certified to be a true copy under the seal of the

Minister and signed by the Minister or by such officer of the Ministry as is designated by the regulations;

5. "co-operative" means a corporation carrying on an enterprise on a co-operative basis and to which this Act applies;
6. "co-operative basis" means organized, operated and administered upon the following principles and methods,
 - i. each member or delegate has only one vote,
 - ii. no member or delegate may vote by proxy,
 - iii. interest on loan capital and dividends on share capital are limited to a percentage fixed by this Act or the articles of incorporation, and
 - iv. the enterprise of the corporation is operated as nearly as possible at cost after providing for reasonable reserves and the payment or crediting of interest on loan capital or dividends on share capital; and any surplus funds arising from the business of the organization, after providing for such reasonable reserves and interest or dividends, unless used to maintain or improve services of the organization for its members or donated for community welfare or the propagation of co-operative principles, are distributed in whole or in part among the members in proportion to the volume of business they have done with or through the organization;
7. "corporation" means a corporation with or without share capital whether or not it is a co-operative to which this Act applies;
8. "court" means the Supreme Court of Ontario presided over by one of those judges of the High Court who are designated by the Chief Justice of the High Court for the purpose of hearing applications under this Act;
9. "debt obligation" means a bond, debenture, note or other similar obligation of a corporation, whether secured or unsecured;

10. "direct charge co-operative" means a co-operative that deals with its members and prospective members only in products or services on a cost basis and that directly charges its members a fee to cover the operating expenses of the co-operative;
11. "financial statement" means a financial statement referred to in section 128;
12. "issued capital" means the issued capital as determined under section 29;
13. "member" means a person who is a member of a co-operative pursuant to the provisions of this Act or the articles and by-laws of the co-operative governing membership;
14. "Minister" means the Minister of Consumer and Commercial Relations or such other member of the Executive Council to whom the administration of this Act may be assigned;
15. "Ministry" means the Ministry of the Minister;
16. "officer" means the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager, or any other person designated an officer by by-law or by resolution of the directors or any other individual who performs functions for the co-operative similar to those normally performed by an individual occupying any such office;
17. "personal representative", where used with reference to the holding of shares or loans or the exercise of a member's rights in that capacity, means in the capacity of an executor, administrator, guardian, tutor, trustee, receiver or liquidator of the member, shareholder or lender or the committee of or curator to the member, shareholder or lender who is a mentally incompetent person;
18. "prescribed" means prescribed by the regulations;
19. "regulations" means the regulations made under this Act;
20. "related person", where used to indicate a relationship with any person, means,

- i. any spouse, son or daughter of that person, or
 - ii. any relative of such person or of his spouse, other than a relative referred to in subparagraph i, who has the same home as such person;
21. "resident Canadian" means a Canadian citizen or person lawfully admitted to Canada for permanent residence, who is ordinarily resident in Canada;
22. "security" means any share of any class of shares or any debt obligation of a corporation;
23. "senior officer" means,
- i. the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a co-operative or any other individual who performs functions for the co-operative similar to those normally performed by an individual occupying any such office, and
 - ii. each of the five highest paid employees of a co-operative, including any individual referred to in subparagraph i;
24. "special resolution" means a resolution that is not effective until it is,
- i. passed by the directors of a co-operative, and
 - ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the members of the co-operative duly called for that purpose, or such greater proportion of the votes cast as the articles provide;
25. "term loan" means a loan having a fixed date of maturity and includes member and patronage loans having a fixed date of maturity.

Interpre-
tation:
subsidiary

(2) For the purposes of this Act, a corporation shall be deemed to be a subsidiary of a co-operative if, but only if, it is controlled by that co-operative.

Holding
co-operative

(3) For the purposes of this Act, a co-operative shall be deemed to be a corporation's holding co-operative if, but only if, that corporation is its subsidiary.

Control

(4) For the purposes of this Act, a subsidiary shall be deemed to be controlled by one or more other corporations if, but only if,

- (a) shares of the subsidiary carrying more than 50 per cent of the votes for the election of directors are held, other than by way of security only, by or for the benefit of such one or more other corporations; and
- (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the subsidiary.

(5) For the purposes of this Act, a co-operative is insolvent^{Insolvency} if its liabilities exceed the realizable value of its assets or if the co-operative is unable to pay its debts as they become due.

(6) In determining the number of members of a co-operative,^{Number of members} for the purposes of this Act, two or more persons holding the same share or shares jointly shall be counted as one member.

2. The Minister may delegate in writing any of his duties<sup>Adminis-
tration</sup> or powers under this Act to any public servant in the Ministry.

3. This Act, except where it is otherwise expressly pro-^{Application}vided, applies,

- (a) to every corporation incorporated as a co-operative by or under a general or special Act of the Parliament of the former Province of Upper Canada;
- (b) to every corporation incorporated as a co-operative by or under a general or special Act of the Parliament of the former Province of Canada that has its head office and carries on business in Ontario and that was incorporated with objects to which the authority of the Legislature extends; and
- (c) to every corporation incorporated as a co-operative by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation to which *The*<sup>R.S.O. 1970,
c. 96</sup> *Credit Unions Act* applies.

INCORPORATION

4.—(1) A co-operative may be incorporated under this^{Incorporation} Act for any lawful objects to which the authority of the Legislature extends, except those of a corporation the incorporation of which is provided for in any other Act.

(2) Where the practice of a profession is governed by an^{Professions} Act, a co-operative may be incorporated to practise the profession only if such Act expressly permits the practice of the profession by a corporation and subject to the provisions of such Act.

Articles of
incorporation

5.—(1) Five or more persons, being corporations or natural persons who are of the age of eighteen years or more, may incorporate a co-operative with or without share capital by signing and delivering to the Minister in duplicate articles of incorporation.

Contents of
articles

(2) Subject to subsection 3, articles of incorporation shall set out the following particulars:

1. The name of the co-operative to be incorporated.
2. The objects for which the co-operative is to be incorporated.
3. The place in Ontario where the head office of the co-operative is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district and the address giving the street and number, if any.
4. The number of directors of the co-operative and the names in full and the residence addresses, giving the street and number, if any, of each person who is to be a first director of the co-operative.
5. The name in full, and the residence address, giving the street and number, if any, of each of the incorporators.

Idem

(3) In addition to the particulars required to be set out in subsection 2, articles of incorporation shall state,

- (a) where there is to be share capital,
 - (i) the authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares of each class and the par value of each share,
 - (ii) where there are to be preference shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to them or each class of them,
 - (iii) the restrictions to be placed on the transfer of its shares or any class thereof, and
 - (iv) the class and number of shares to be taken by each incorporator and the amount to be paid therefor;

- (b) where there is to be no share capital,
- (i) the amount of the membership fee,
 - (ii) the authorized loan capital,
 - (iii) the restrictions to be placed on the transfer of member loans,
 - (iv) the classes of membership, if any, setting forth the designation of and the terms and conditions attaching to each class of membership, and
 - (v) the amount of a minimum member loan, if any,

and any other matter required by this Act or the regulations to be set out in the articles.

(4) The articles may set out any provision that is authorized ^{Idem} by this Act to be set out in the articles or that could be the subject of a by-law of the co-operative.

(5) Where the articles name as a first director a person who is not an incorporator, the articles shall have attached thereto his written and signed consent to act as a first director ^{Consent of first director}.

(6) The signature of each incorporator and of each first director and the fact that each incorporator who is a natural person and each first director is of the age of eighteen years or more shall be verified by affidavit ^{Affidavits}.

6.—(1) If the articles conform to law and the approval of any person or body required by statute to approve the incorporation has been given, the Minister shall, when all prescribed fees have been paid, ^{Certificate of incorporation}

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the incorporators or their agent a certificate of incorporation to which he shall affix the other duplicate.

(2) A co-operative comes into existence upon the date set forth in its certificate of incorporation ^{Idem}.

Idem (3) A certificate of incorporation is conclusive proof that all conditions precedent required to be performed by the incorporators have been complied with and that the co-operative has been incorporated under this Act, except in a proceeding under section 166 to cancel the certificate for cause.

NAME

Use of co-operative **7.—(1)** The corporate name of a co-operative shall include the word “co-operative” as part thereof.

Idem (2) Where a co-operative or any director, officer, employee or member uses the name of the co-operative, the word “co-operative” may be abbreviated to “co-op”.

Idem (3) No corporation, association, partnership or individual not being a co-operative to which this Act applies shall use in Ontario a name that includes the word “co-operative” or any abbreviation or derivation thereof whether or not the word, abbreviation or derivation is used in or in connection with the name.

Idem (4) Subsection 3 does not apply to a corporation incorporated by or under the authority of the Parliament of Canada, to a corporation granted an extra-provincial licence, to a corporation incorporated under the laws of Ontario before the 12th day of April, 1917, or to a corporation to which *The Credit Unions Act* applies.

R.S.O. 1970,
c. 96

Use of “Incorporated”, “Corporation” (5) Subject to subsection 6, the name of a co-operative shall have the word “Incorporated” or “Corporation” or its corresponding abbreviation “Inc.” or “Corp.” as the last word thereof.

Use of “Limited” (6) Where a co-operative has share capital, the name of the co-operative may have the word “Limited” or its abbreviation “Ltd.” as the last word thereof.

Use of name **8.** Notwithstanding section 7, a co-operative may use its name in such form and in such language as the articles provide and as the Minister approves.

Co-operative name **9.—(1)** The name of a co-operative shall not,

- (a) be the same as or similar to the name of a known corporation, association, partnership or individual whether in existence or not if its use would be likely to deceive, except where the corporation, association, partnership or individual signifies its or his consent in writing to the use of the name in whole or in part, and, if required by the Minister,

- (i) in the case of a corporation, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles or amendment by which the name is acquired, or
- (ii) in the case of an association, partnership or individual, undertakes to cease to carry on its or his business or activities, or change its or his name to a dissimilar name, within six months after the filing of the articles or amendment by which the name is acquired;
- (b) suggest or imply a connection with the Crown or the Government of Canada or the government of a municipality or any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government or municipality without the consent in writing of the appropriate authority;
- (c) suggest or imply a connection with a political party or a leader of a political party;
- (d) contain any word or phrase that indicates or implies that it is incorporated for any object other than one or more of the objects set out in its articles;
- (e) contain any word or phrase or any abbreviation or derivation thereof, the use of which is prohibited or restricted under any other Act unless in the latter case the restrictions are complied with; or
- (f) in the opinion of the Minister, be objectionable on any public grounds.

(2) If a co-operative through inadvertence or otherwise has acquired a name contrary to subsection 1, the Minister may, after he has given the co-operative an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly. Change of name if objectionable

(3) Where an undertaking referred to in clause *a* of subsection 1 is given by a co-operative and the undertaking is not carried out within the time specified, the Minister may, after giving the co-operative an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly. Failure to perform undertaking

Idem (4) Where an undertaking referred to in clause *a* of subsection 1 is given by a corporation to which this Act does not apply or by an association, partnership or individual and the undertaking is not carried out within the time specified, the Minister may, after giving the co-operative that acquired the name by virtue of such undertaking an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate, the articles are amended accordingly.

Change not to affect rights, etc. **10.** A change in the name of a co-operative does not affect its rights or obligations.

Unauthorized use of "Limited", etc. **11.** Where a co-operative carries on business or identifies itself to the public in a name or style other than as provided in the articles, such name or style shall not include the word "Limited", "Incorporated" or "Corporation" or any abbreviation thereof.

Reservation of name **12.—(1)** Any person may, on application in writing and on the payment of the prescribed fee, reserve a corporate name for the use and benefit of the applicant or his nominee for a period of ninety days or such lesser period as he specifies, if the name is at the time not contrary to section 9.

Idem (2) During the period for which the name has been reserved, no corporation shall acquire the name or a similar name without the consent in writing of the person for whose use and benefit the name has been reserved.

SEAL AND HEAD OFFICE

Corporate seal **13.—(1)** A co-operative shall have a seal which shall be adopted and may be changed by resolution of the directors.

Idem (2) The name of the co-operative shall appear in legible characters on the seal.

Head office **14.—(1)** Subject to subsection 2, a co-operative shall at all times have its head office at the place in Ontario where the articles provide that the head office is to be located.

Change of head office (2) A co-operative may by by-law change the municipality or geographic township in which its head office is located to another place in Ontario.

Where municipality annexed or amalgamated (3) Where the location of the head office of a co-operative is changed by reason only of the annexation or amalgamation of the place in which the head office is located

to or with another municipality, such change does not constitute and has never constituted a change within the meaning of subsection 2.

(4) The co-operative shall, within ten days after a by-law ^{Filing of by-law} passed under subsection 2 has been confirmed by the members, file a certified copy of the by-law with the Minister.

(5) A co-operative may by resolution of the directors change ^{Change of street address} the location of its head office within a municipality or geographic township and shall, within ten days after the passing of the resolution, file with the Minister notice of the change giving the address including the street and number, if any, of the new location.

(6) Failure to comply with subsection 4 or 5 does not ^{Validity} affect the validity of the by-law or resolution.

POWERS

General

15.—(1) Every co-operative has power,

^{Corporate characteristics}

- (a) to have perpetual succession;
- (b) to contract and sue and be sued in its corporate name; and
- (c) to carry on business in or identify itself to the public by a name or style other than its corporate name.

(2) A co-operative has power as incidental and ancillary ^{Incidental powers} to the objects set out in its articles,

- 1. to carry on any other business capable of being conveniently carried on in connection with its business or likely to enhance the value of any of its property or rights;
- 2. to acquire or undertake the whole or any part of the business, property and liabilities of any person carrying on any business that the co-operative is authorized to carry on;
- 3. to apply for, register, purchase, lease, acquire, hold, use, control, license, sell, assign or dispose of patents, patent rights, copyrights, trade marks, formulae, licences, inventions, processes, distinctive marks and similar rights;

4. to enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or corporation carrying on or engaged in or about to carry on or engage in any business or transaction that the co-operative is authorized to carry on or engage in or any business or transaction capable of being conducted so as to benefit the co-operative;
5. where authorized to do so by resolution of the board of directors and where it is necessary to enable the co-operative to improve its services to its members, to take or otherwise acquire and hold securities in any other corporation having objects altogether or in part similar to those of the co-operative or carrying on any business capable of being conducted so as to benefit the co-operative;
6. to lend money to any other corporation or any firm or person having dealings with the co-operative or with whom the co-operative proposes to have dealings or to any other corporation any of whose shares are held by the co-operative;
7. to apply for, secure or acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege, that any government or authority or any corporation or other public body may be empowered to grant, and to pay for, aid in and contribute towards carrying it into effect and to assume any liabilities or obligations incidental thereto;
8. to establish and support or aid in the establishment and support of associations, institutions, funds or trusts for the benefit of employees or former employees of the co-operative or its predecessors, or the dependants or connections of such employees or former employees, and grant pensions and allowances, and make payments towards insurance or for any object similar to those set forth in this paragraph, and to subscribe or guarantee money for charitable, benevolent, educational or religious objects or for any exhibition or for any public, general or useful objects;
9. to promote any corporation for the purpose of acquiring or taking over any of the property and liabilities of the co-operative or for any other purpose that may benefit the co-operative;

10. to purchase, lease, take in exchange, hire or otherwise acquire any personal property and any rights or privileges that the co-operative considers necessary or convenient for the purposes of its business ;
11. to construct, maintain and alter any buildings or works necessary or convenient for its objects ;
12. to acquire by purchase, lease or otherwise and hold any land or interest therein necessary for its actual use and occupation or for carrying on its undertaking, and, when no longer necessary therefor, to sell, alienate or convey it ;
13. to take, hold and alienate real and personal property that has in good faith been mortgaged to the co-operative by way of security for, or conveyed to it in satisfaction of, debts previously contracted in the course of its business, or purchased at judicial sales upon levy for such indebtedness, or otherwise purchased for the purpose of avoiding a loss to the co-operative ;
14. to construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, water-courses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences that may advance the interests of the co-operative and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof ;
15. to raise and assist in raising money for, and aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person or corporation and guarantee the performance or fulfilment of any contracts or obligations of any person or corporation, and in particular guarantee the payment of the principal of and interest on the debt obligations of any such person or corporation ;
16. to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable instruments ;
17. where authorized to do so by a special resolution and by such additional authorization as the articles provide, to sell, lease, exchange or otherwise dispose

of all or substantially all the property of the co-operative for such consideration as the co-operative thinks fit;

18. to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with the property of the co-operative in the ordinary course of its business;
19. to adopt such means of making known the products or services of the co-operative as may seem expedient, and in particular by advertising, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes and rewards and making donations;
20. to cause the co-operative to be registered and recognized in any foreign jurisdiction or any province or territory of Canada, and designate persons therein according to the laws of that foreign jurisdiction or that province or territory of Canada to represent the co-operative and to accept service for and on behalf of the co-operative of any process or suit;
21. to allot and issue fully-paid shares of the co-operative in payment or part payment of any property purchased or otherwise acquired by the co-operative or for any past services performed for the co-operative;
22. to distribute among the members of the co-operative in cash, kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner deemed advisable, any property of the co-operative, but not so as to decrease the capital of the co-operative unless the distribution is made for the purpose of enabling the co-operative to be dissolved or the distribution, apart from this paragraph, would be otherwise lawful;
23. to establish agencies and branches;
24. to take or hold mortgages, hypothecs, liens and charges to secure payment of the purchase price, or of any unpaid balance of the purchase price; of any part of the property of the co-operative of whatsoever kind sold by the co-operative, or for any money due to the co-operative from purchasers and others and to sell or otherwise dispose of any such mortgage, hypothec, lien or charge;

25. to pay all costs and expenses of or incidental to the incorporation and organization of the co-operative;
26. to invest and deal with the moneys of the co-operative not immediately required for the objects of the co-operative in such manner as may be determined;
27. to do any of the things authorized by this subsection and all things authorized by its articles as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;
28. to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the co-operative.

(3) Any of the powers set out in subsection 2 may be with- Limited by articles
held or limited by the articles.

(4) Every co-operative may exercise its powers beyond the boundaries of Ontario to the extent to which the laws in Powers to act outside of Ontario
force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights.

16.—(1) No act of a co-operative and no transfer of real Acting outside powers
or personal property to or by a co-operative, otherwise lawful, that is heretofore or hereafter done or made, is invalid by reason of the fact that the co-operative was without capacity or power to do such act or make or receive such transfer, but such lack of capacity or power may be asserted,

- (a) in a proceeding against the co-operative by a member under subsection 2;
- (b) in a proceeding by the co-operative, whether acting directly or through a receiver, liquidator, trustee or other legal representative or through members in a representative capacity, against a director or officer or former director or officer of the co-operative; or
- (c) as cause for the cancellation of the certificate of incorporation of the co-operative under section 166.

(2) A member of a co-operative may apply to a court of Restraining order
competent jurisdiction for an order to restrain the co-operative from doing any act or transferring or receiving the transfer of real or personal property on the ground that the co-operative lacks capacity or power for the purpose, and the court may, if it considers it to be just and equitable, grant an order prohibiting the co-operative from doing the act or transferring

or receiving the transfer of the real or personal property, but, where the act or transfer sought to be restrained or prohibited is being or to be done or made under a contract to which the co-operative is a party,

- (a) all the parties to the contract shall be parties to the proceeding;
- (b) the court in granting the order may set aside the contract and allow the co-operative or other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the granting of the order and setting aside of the contract, other than anticipated profits from the contract.

Loans to
members,
directors,
etc.

17.—(1) A co-operative shall not make loans to any of its members, directors or employees or give directly or indirectly, by means of a loan, guarantee, the provision of security or otherwise, any financial assistance to any member, director or employee, except in the course of transactions of a type available to all members of the co-operative.

Liability of
directors
and officers

(2) Those directors and officers of a co-operative who authorize or consent to making a loan or giving financial assistance in contravention of subsection 1 are jointly and severally liable to the co-operative and to its creditors for any actual loss to the co-operative together with interest at the rate of 6 per cent a year.

Contracts

Contracts in
writing
under seal

18.—(1) A contract that if entered into by an individual person would by law be required to be in writing and under seal may be entered into on behalf of a co-operative in writing under the seal of the co-operative.

Contracts in
writing not
under seal

(2) A contract that if entered into by an individual person would by law be required to be in writing signed by the parties to be charged therewith may be entered into on behalf of a co-operative in writing signed by any person acting under its authority, express or implied.

Parol
contracts

(3) A contract that if entered into by an individual person would by law be valid although made by parol only and not reduced into writing may be entered into by parol on behalf of a co-operative by any person acting under its authority, express or implied.

19. A co-operative may, by writing under seal, empower any person, either generally or in respect of any specified matters, to execute, as its attorney and on its behalf in any place within or outside Ontario, documents to which it is a party in any capacity and that are required by law to be under seal, and every document signed by such attorney on behalf of the co-operative acting within the scope of his authority, express or implied, and under his seal binds the co-operative and has the same effect as if it were under the seal of the co-operative. Power of attorney

20.—(1) In this section,

Interpretation

- (a) “contractor” means a person who enters into a preincorporation contract in the name of or on behalf of a co-operative before its incorporation;
- (b) “other party” means a person with whom a contractor enters into a preincorporation contract;
- (c) “preincorporation contract” means a contract entered into by a contractor in the name of or on behalf of a co-operative before its incorporation.

(2) A co-operative may adopt a preincorporation contract entered into in its name or on its behalf, and thereupon the co-operative is entitled to the benefits and is subject to the liabilities that were contracted in its name or on its behalf and the contractor ceases to be entitled to such benefits or to be subject to such liabilities. Adoption of preincorporation contracts

(3) Where a preincorporation contract is not adopted by a co-operative, the contractor is entitled to the benefits and subject to the liabilities under the contract and is entitled to recover from the co-operative the value of any benefit received by the co-operative under the contract. Non-adoption of preincorporation contracts

(4) Whether or not a preincorporation contract is adopted by the co-operative, the other party may apply to the court which may, notwithstanding subsections 2 and 3, make an order fixing or apportioning liability as between the contractor and the co-operative in any manner the court considers just and equitable under the circumstances. Application to court for relief

By-Laws and Resolutions

21. The directors may pass by-laws not contrary to this Act or to the articles to regulate, By-laws

- (a) the allotment and issue of shares, the payment thereof, the issue of share certificates and the transfer and the registration of transfers of shares;
- (b) the admission of persons as members and as *ex officio* members and the qualification of and the conditions of membership;
- (c) the time for and the manner of election of directors;
- (d) the qualification and remuneration of directors including conditions on eligibility of directors of the co-operative by reference to a minimum annual volume of business conducted by a director with the co-operative;
- (e) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the co-operative and the security, if any, to be given by them to it;
- (f) the time and place and the notice to be given for the holding of meetings of the members and of the board of directors, the quorum at meetings of members and the procedure in all things at members' meetings and at meetings of the board of directors;
- (g) the payment of fees and dues of members;
- (h) the issue of membership cards and loan certificates;
- (i) the suspension and termination of memberships by the co-operative and by the members;
- (j) the conduct in all other particulars of the affairs of the co-operative.

Remuneration of directors

22. A by-law relating to the remuneration of a director as director shall fix the remuneration and the period for which it is to be paid.

Passing of by-laws

23. No by-law is effective until it is,

- (a) passed by the directors of a co-operative; and
- (b) confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the members of the co-operative duly called for that purpose, or such greater proportion of the votes cast as the articles provide.

Member Groups and Delegates

24.—(1) The directors may pass by-laws providing for, By-laws
re delegates

- (a) the division of its members into groups, either territorially or on the basis of common interest;
- (b) the election of some or all of its directors,
 - (i) by such groups on the basis of the number of members in each group or the volume of business done by each group with the co-operative, or both, or
 - (ii) for the groups in a defined geographical area, by the delegates of such groups meeting together;
- (c) the election of delegates and alternate delegates to represent each group on the basis of the number of members in each group or the volume of business done by each group with the co-operative, or both;
- (d) where all of the members are co-operatives, the election of delegates and alternate delegates to represent such co-operatives on the basis of the number of members in each co-operative or the volume of business done with each co-operative, or both;
- (e) the number and method of electing delegates;
- (f) the holding of meetings of delegates;
- (g) the authority of delegates at meetings or providing that a meeting of delegates shall for all purposes be deemed to be and to have all the powers of a meeting of the members;
- (h) the holding of meetings of members or delegates territorially or on the basis of common interest;
- (i) the payment of remuneration and expenses of delegates attending meetings.

(2) A delegate has only one vote and shall not vote by Voting
proxy.

(3) No person shall be elected a delegate who is not a Qualifi-
cation
of delegates
member, officer or director of the co-operative.

Saving (4) No by-law under subsection 1 shall prohibit members from attending meetings of delegates and participating in the discussions at such meetings.

CAPITAL

Authorized Capital

Shares **25.**—(1) The authorized capital of a co-operative shall be divided into shares with par value and may consist of shares of more than one class.

Par value (2) Each class of shares shall have a par value of \$1 or any multiple thereof not exceeding \$100.

Authorized capital (3) The authorized capital of the co-operative shall be expressed in Canadian currency in its articles and is an amount equal to the total of the products of the number of shares of each class multiplied by the par value thereof.

Common shares **26.**—(1) The common shares of a co-operative shall be shares to which there is attached no preference, right, condition, restriction, limitation or prohibition set out in the articles of the co-operative other than the restriction on the allotment, issue or transfer.

Classes of shares (2) Where a co-operative has only one class of shares, that class shall be common shares and designated as co-operative or co-op common shares.

Idem (3) Where a co-operative has more than one class of shares, one class shall be common shares, designated as provided in subsection 2, and the other shares shall consist of one or more classes of preference shares and shall have attached thereto the designation co-operative or co-op preference shares and such other designation and preferences, rights, conditions, restrictions, limitations or prohibitions as set out in the articles.

Preference shares (4) No class of preference shares shall be designated as preference shares or by words of like import, unless the class has attached thereto a preference or right over the common shares.

Preferences, rights, etc. **27.** A co-operative may issue one or more classes of preference shares having attached thereto preferences, rights, conditions, restrictions, limitations or prohibitions, including but not limited to,

- (a) the right to cumulative, non-cumulative or partially cumulative dividends;

- (b) a preference over any other class or classes of shares as to the payment of dividends;
- (c) a preference over any other class or classes of shares as to the repayment of the par value together with any dividends declared but unpaid upon the dissolution of the co-operative or otherwise;
- (d) the right of the co-operative to redeem, without the consent of the holders thereof, all or a part of the shares of that class at their par value together with any dividends declared but unpaid.

28. Each share of a class shall be the same in all respects as every other share of that class. Equality of shares of a class

Issued Capital

29. The issued capital of a co-operative shall be expressed in Canadian currency and is an amount equal to the total of the products of the number of issued shares of each class multiplied by the par value thereof less such decreases in the issued capital as from time to time have been effected by the co-operative in accordance with this Act. Issued capital

30.—(1) Where an issued share of a class is cancelled, the issued capital is decreased by an amount equal to the par value of the shares of that class. Cancellation of par share

(2) Where a fraction of an issued share of a class is cancelled, the issued capital is decreased by an amount that bears the same proportion to the amount determined under subsection 1 that the fraction bears to a whole share of that class. Cancellation of fractions of shares

Redemption, Purchase and Surrender

31.—(1) Where the articles provide that the shares of a class of preference shares are redeemable without the consent of the holders thereof and part only of the preference shares are to be redeemed, the shares to be redeemed shall be selected, Redemption of preference shares

- (a) by lot in such manner as the board of directors determines;
- (b) as nearly as may be in proportion to the number of preference shares of the class registered in the name of each holder of shares of that class; or
- (c) in such other manner as the board of directors determines with the consent of the holders of prefer-

ence shares of the class obtained in the manner set out in subsection 2,

but the articles may confine the manner of selection to one or more of those methods set out in clauses *a*, *b* and *c*.

Insolvency (2) A co-operative shall not redeem shares under subsection 1 if the co-operative is insolvent or if the redemption would render the co-operative insolvent.

Method of redemption (3) Where shares of a class of preference shares are selected in the manner referred to in clause *c* of subsection 1, the selection shall be consented to in writing by,

(a) all the holders of the preference shares of the class;
or

(b) at least 95 per cent of the holders of the preference shares of the class holding at least 95 per cent of the issued shares of that class if, after twenty-one days notice has been given by sending notice to each of the holders of shares of that class addressed to him at his latest address as shown on the records of the co-operative, none of the holders of shares of that class dissents in writing to the co-operative.

Idem (4) Where a holder of redeemable preference shares of a co-operative dies or leaves its employment, notwithstanding subsection 1, it may within one year of such event redeem all or any of the preference shares held by him.

Purchase of preference and common shares

32.—(1) Subject to subsection 2, a co-operative,

(a) with the consent of the holder thereof, may purchase all or a part of the shares in the co-operative held by any person upon payment of such an amount to that person not exceeding the par value of the shares together with any dividends declared but unpaid;

(b) when a corporate member is about to be dissolved or a member has failed for a period of two years to transact any business with the co-operative, may redeem without the consent of such member his shares upon payment to him of an amount equal to the book value or par value of such shares, whichever is the lesser.

Insolvency (2) A co-operative shall not purchase or redeem shares under subsection 1 if the co-operative is insolvent or if the purchase would render the co-operative insolvent.

(3) Where shares are purchased or redeemed by a co-operative under subsection 1 or where preference shares are redeemed pursuant to the articles, ^{Method}

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the co-operative are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
 - (i) the board of directors may at the time of the purchase or redemption cancel the shares in which case the authorized and issued capital of the co-operative are thereby decreased and the articles are amended accordingly; or
 - (ii) the board of directors may resell the shares at such time and price and on such terms as it determines.

33.—(1) A co-operative may accept from any member a donation of any of its shares without any repayment of capital in respect thereof. ^{Donation of shares}

(2) Shares accepted under subsection 1 are not thereby cancelled, and the board of directors may sell the shares at such time and price and on such terms as it determines. ^{Sale of donated shares}

Offering Statement

34.—(1) Prior to the issue of any securities by a co-operative, the co-operative shall file with the Minister an offering statement and obtain a receipt therefor. ^{Offering statement}

- (2) Subsection 1 does not apply to, ^{Exception}
 - (a) the issue of shares under subsection 1 of section 56 or of debt obligations under subsection 4 of section 56; or
 - (b) a co-operative that has fifteen or fewer members.

35.—(1) An offering statement shall provide full, true and plain disclosure of all material facts relating to the securities proposed to be issued. ^{Standard of disclosure}

(2) An offering statement shall comply as to form and content with the requirements of this Act and the regulations. ^{Form and content}

(3) There shall be filed with an offering statement such documents, reports and other material as are required by this Act and the regulations. ^{Supporting material}

Material
changes

(4) Where there is a material change in the facts set forth in an offering statement, whether before or after the issuance of a receipt therefor, the co-operative shall, within thirty days of that change, file with the Minister a statement of such change.

Further
statements

(5) A co-operative may, and shall if required by the Minister, file a further offering statement revised to give effect to all previous material changes in place of the statement of material change mentioned in subsection 4.

Issue of
receipts

36.—(1) The Minister may in his discretion issue a receipt for any statement filed under section 34 or subsections 4 or 5 of section 35 unless it appears to the Minister that,

(a) the statement or any document required to be filed therewith,

(i) fails to comply in any substantial respect with any of the requirements of this Act or the regulations,

(ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or

(iii) conceals or omits to state any material facts necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made; or

(b) the proceeds from the sale of the securities to which the statement relates that are to be paid into the treasury of the co-operative, together with other resources of the co-operative, are insufficient to accomplish the purpose of the issue stated in the statement.

Idem

(2) The Minister shall not make any determination under subsection 1 without making an order or ruling in writing and without giving the co-operative that filed the statement a prior opportunity to be heard.

Inspection of
statement

37.—(1) A copy of a statement for which the Minister has issued a receipt under section 36 shall be open to inspection,

(a) at the offices of the Ministry; and

(b) during normal business hours, at the head office of the co-operative.

(2) No person shall refuse to permit a person to inspect ^{Extracts} such statements or to make extracts therefrom.

38. A co-operative already in existence when this Act ^{Transition} comes into force shall have a period of 180 days from that date during which to comply with sections 34 to 37.

Allotment, Issue and Transfer

39.—(1) Shares shall not be allotted or issued except for a ^{Issue of shares} consideration at least equal to the product of the number of shares allotted or issued multiplied by the par value thereof.

(2) No share shall be issued until it is fully paid and a ^{Consideration for shares} share is not fully paid until all the consideration therefor in cash, property or services, as determined under this section, has been received by the co-operative.

(3) For the purposes of subsection 2 and paragraph 21 of ^{Idem} subsection 2 of section 15, a document evidencing indebtedness of the allottee does not constitute property and services shall be past services actually performed for the co-operative, and the value or property or services shall be the value the directors determine by express resolution to be in all the circumstances of the transaction the fair equivalent of the cash value.

40. No transfer of common shares in a co-operative with ^{Restriction on transfer of common shares} share capital, unless made by sale under execution or under the decree, order or judgment of a court of competent jurisdiction or by transmission to the personal representative of a member, is valid for any purpose unless,

- (a) the transfer has been authorized by resolution of the directors of the co-operative or by a person authorized by such a resolution to approve such transfers;
- (b) the transferee is admitted to membership in the co-operative as required by its articles and by-laws; and
- (c) the entry thereof has been duly made in the register of transfers of the co-operative or in a branch register of transfers,

except only as evidence of the rights of the parties thereto towards each other.

41.—(1) A co-operative may provide by by-law for the ^{Commission on sale of shares} payment of commissions or allowing discounts to persons in consideration of their subscribing or agreeing to subscribe,

whether absolutely or conditionally, for shares in the co-operative, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares but no such commission or discount shall exceed 25 per cent of the amount of the subscription price.

No
unauthorized
commission

(2) Except as provided in subsection 1, no co-operative shall apply any of its shares or capital, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares of the co-operative or procuring or agreeing to procure subscriptions whether absolute or conditional, for such shares, whether the shares or capital is so applied by being added to the purchase money of any property acquired by the co-operative or to the contract price of any work to be executed for the co-operative, or is paid out of the nominal purchase money or contract price or otherwise.

Shares
personal
property

42. The shares of a co-operative are personal property and are transferable in such manner and subject to such conditions and restrictions as are prescribed by this Act and the articles of the co-operative.

Lien on
shares

43. Where the articles or by-laws so provide the co-operative has a lien to the extent of the debt on the shares registered in the name of a member who is indebted to the co-operative.

Share and Loan Certificates

Share and
loan
certificates

44.—(1) Every member is entitled to a share or loan certificate in respect of the shares held or loans made by him, signed by the proper officers in such form as the by-laws of the co-operative provide, but in no case is the co-operative bound to issue more than one share or loan certificate in respect of a share or shares held or a loan made jointly by several persons, and delivery of a share or loan certificate to one of several joint holders or lenders is sufficient delivery to all.

Fee

(2) A co-operative may charge a fee of not more than \$1 for every share certificate issued, except that in the case of the allotment and issue of shares, no fee shall be charged.

Signing of
certificate

45. A share or loan certificate shall be signed manually by at least one officer of the co-operative or by or on behalf of a transfer agent of the co-operative, and the co-operative may by by-law provide that any additional signatures required on share or loan certificates may be printed, engraved, litho-

graphed or otherwise mechanically reproduced thereon, and in such event share or loan certificates so signed are as valid as if they had been signed manually.

46.—(1) Every share or loan certificate shall state upon its face, Contents of certificates

- (a) the name of the co-operative and the words “A co-operative incorporated under the law of the Province of Ontario” or words of like effect ;
- (b) the name of the person to whom the share or loan certificate is issued as holder ;
- (c) the amount, maturity date and annual rate of interest where the certificate represents a loan ;
- (d) the number and class of shares represented thereby and the par value thereof where the certificate represents shares ;
- (e) a statement of the dividend rate, where applicable.

(2) Every share certificate shall have noted conspicuously thereon the words “Transfer of these shares is restricted”. Restrictions to be noted

(3) Where the articles or by-laws provide that a co-operative has a lien on shares as authorized by section 43, the right of the co-operative to the lien shall be noted conspicuously on every share certificate issued by the co-operative. Notice of lien

(4) In this section, “noted conspicuously” means written in such a way that the person against whom words so noted or appearing are to operate ought reasonably to notice them. Interpretation

47.—(1) A share certificate issued for a share of a class of preference shares shall, Contents of preference share certificate

- (a) legibly state on the certificate or have attached thereto a legible statement of the preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class of shares ; or
- (b) legibly state on the certificate that there are preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class and that a copy of the full text thereof is obtainable on demand and without fee from the co-operative.

Idem

(2) Where a share certificate contains a statement as provided in clause *b* of subsection 1, the co-operative shall furnish to the holder of the shares on demand without fee a copy of the full text of the preferences, rights, conditions, restrictions, prohibitions and limitations attaching to the share.

Fractional shares

48. Where, as a result of a change in authorized capital of a co-operative, a person becomes entitled to a fraction of a share, he is not entitled to be registered on the records of the co-operative in respect thereof or to receive a share certificate therefor, but he is entitled to receive a bearer fractional certificate in respect to such fraction, and on presentation at the head office of the co-operative or at a place designated by the co-operative of bearer fractional certificates for fractions that together represent a whole share, a share certificate for a whole share shall be issued in exchange therefor.

Loan Capital

Member loans

49.—(1) The capital of co-operatives without share capital may be in the form of loans from members, called "member loans", and such loans may be in such amounts, payable on demand or at such times and without interest or at interest not exceeding 8 per cent per annum, or if authorized by by-law of the co-operative, at such a lesser rate as the board of directors may by resolution determine.

Borrowing from members

(2) A co-operative may borrow money from its members not being loans made as a condition of membership or as compulsory loans of patronage returns, in such amounts payable on demand or at such times and either without interest or with interest at such rate as the by-laws provide or, if authorized by by-law, at such rate as the directors may by resolution determine.

Borrowing Powers

Borrowing powers

50.—(1) Where authorized by by-law, the directors may,

- (a) borrow money on the credit of the co-operative; or
- (b) issue, sell or pledge debt obligations of the co-operative; or
- (c) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal movable or immovable property of the co-operative, including book debts, rights, powers,

franchises and undertaking, to secure any debt obligations or any money borrowed or other debt or liability of the co-operative.

(2) Any by-law referred to in subsection 1 may,

Contents
of by-law

- (a) limit the amount to be borrowed as determined by the by-law; and
- (b) provide for the delegation by the directors of the powers conferred on them under the by-law to such directors or officers of the co-operative and to such extent and manner as is set out in the by-law.

51. Nothing in this Act prohibits the issue of debt obligations in bearer form.

Bearer
debt
obligations

52. A condition contained in a debt obligation or in an instrument for securing a debt obligation is not invalid by reason only that the debt obligation is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

Irredeemable
debt
obligations

53.—(1) Where a co-operative makes a charge, mortgage or other instrument of hypothecation or pledge to secure its debt obligations, the co-operative shall forthwith after the making thereof, file a duplicate original or certified copy of the instrument in the office of the Minister, but such filing may be made by any interested person.

Filing
debt
obligations

(2) Where the filing is by an interested person under subsection 1, that person is entitled to recover from the co-operative the amount of any prescribed fee paid by him on such filing.

Recovery
of fee

(3) Subsection 1 does not apply to an instrument filed or registered under any other Act.

Exception

DIVIDENDS AND SURPLUS

54. A co-operative may by by-law provide that, before any distribution of surplus arising from the business of the co-operative in each fiscal year is made, the co-operative may,

Reserve
fund and
dividends

- (a) set aside reserve funds;
- (b) provide for the payment of dividends on the share capital at a rate not to exceed 8 per cent per annum of the amount paid up thereon.

Surplus

Distribution
of net
surplus

55.—(1) Subject to subsection 4, the surplus arising from the business of a co-operative, other than a direct charge co-operative, in each fiscal year shall be allocated, credited or paid to the members in proportion to the business done by each member with or through the co-operative, computed at a rate in relation to the quantity, quality or value of the goods or products acquired, marketed, handled, dealt in or sold or services rendered by the member or by the co-operative from or on behalf of or to the member, or the co-operative whether as principal or as agent of the member or otherwise, with appropriate differences in the rate for different classes, grades or qualities thereof.

Idem

(2) The co-operative may by by-law provide that part of the surplus may be allocated, credited or paid to non-members at the same or at lesser rates than to members.

Patronage
return

(3) The amount that is allocated, credited or paid to members or non-members in each fiscal year shall be known as the patronage return.

Limitation
of patronage
return

(4) The co-operative may by by-law provide that, where the value of the goods or products acquired, marketed, handled, dealt in or sold, or services rendered by the co-operative from or on behalf of or to any member or non-member in any year does not exceed \$250, or such lesser amount as is specified in the by-law, no patronage return shall be allocated, credited or paid to such member or non-member.

Marketing
boards

(5) Where members of a co-operative are required by a marketing plan established under an Act of the Legislature, or of the Parliament of Canada, to sell or deliver products or goods or render services to or for a marketing board, then for the purposes of making a patronage return to the members of the co-operative, the members shall be deemed to have sold, delivered or rendered those goods, products or services to the co-operative.

Investment
of patronage
return

56.—(1) A co-operative may by by-law provide that in each fiscal year the whole, or such part as the directors may by resolution determine, of the patronage return of each member shall be applied to the purchase for the member of a stated number of unissued shares of the co-operative or a stated number of issued shares of the co-operative, if obtainable.

Notice

(2) Where a co-operative has enacted a by-law under subsection 1 and the whole or part of the patronage return of a

member is required to be invested in issued shares, the co-operative shall mail a written notice to each member stating the number of shares to be purchased by him.

(3) Unless within thirty days from the date of mailing of the notice referred to in subsection 2 the member required to purchase issued shares has presented for transfer to himself the number of shares that he is required to purchase, the co-operative may on behalf of such member, ^{Purchase of shares on behalf of member}

- (a) purchase the required number of shares from members who are willing to sell such shares;
- (b) pay out of the patronage return of such member the purchase price;
- (c) transfer such shares to the member; and
- (d) issue and forward to such member a certificate representing such shares.

(4) A co-operative may enact by-laws requiring its members to lend to it the whole, or such part as the directors may determine, of the patronage returns to which they may become entitled in each fiscal year upon such terms and at such rate of interest as the directors, if authorized by by-law, may by resolution determine, but in no case at a rate of interest greater than 8 per cent per annum. ^{Compulsory borrowing}

(5) No member shall be required under this section to purchase issued or unissued shares at a price in excess of the par value thereof or issued shares when no such shares are available for purchase. ^{Idem}

(6) Where the co-operative is insolvent, no member shall be required under this section to lend his patronage return or to purchase shares of the co-operative. ^{Idem}

(7) This section does not prevent a member from receiving so much of his patronage return as has not been appropriated to loans to the co-operative in accordance with a resolution of the board of directors or the by-laws. ^{Idem}

57.—(1) A co-operative may, when authorized by by-law, deduct a percentage amount from the moneys received by the co-operative on the goods, products or services marketed, handled or dealt in by the co-operative for or on behalf of any member. ^{Percentage deductions by co-operative}

(2) An amount retained by a co-operative under subsection 1 shall be applied by the co-operative, ^{Idem}

- (a) as a loan on such terms and at such rate of interest not exceeding 8 per cent per annum as the by-law provides; or
- (b) as an investment by the member in common shares of the co-operative, but no member shall be required to purchase such shares in the co-operative at a price in excess of the par value thereof.

Dividends

Power to
declare
dividends

58.—(1) Subject to subsection 2 and the articles of the co-operative, the directors may declare and the co-operative may pay dividends on its issued shares.

Not to
exceed 8 per
cent

(2) A dividend shall not exceed 8 per cent per annum of the par value of the share.

Manner of
payment

(3) A dividend may be paid in cash or in property not exceeding in value the amount of the dividend.

When
dividend
not to be
declared

(4) The directors shall not declare and the co-operative shall not pay any dividend when the co-operative is insolvent, or any dividend the payment of which renders the co-operative insolvent or that diminishes its capital.

Stock
dividends

59. For the amount of any dividend that the directors may declare payable in cash, they may declare a stock dividend and issue therefor shares of the co-operative as fully paid.

MEMBERS

Membership

Membership

60.—(1) Subject to the provisions of this Act and the articles of the co-operative, membership therein is governed by the by-laws of the co-operative.

Classes of
membership

(2) The articles of a co-operative may provide for more than one class of membership and in that case shall set forth the designation of and the terms and conditions attaching to each class.

Incor-
porators
deemed
members

61.—(1) Each incorporator of a co-operative who has subscribed for a common share in the co-operative or who has paid a membership fee, if any, shall upon the effective date of incorporation be entered upon the register of members.

(2) No person shall become a member of a co-operative until his application for membership has been approved by the directors and the applicant has complied fully with the by-laws governing admission of members. ^{Applicants for membership}

(3) A subscription for common shares in a co-operative with share capital constitutes an application for membership and the allotment of a common share to the applicant constitutes admission to membership. ^{Idem}

(4) An application for authorization of the transfer of common shares in a co-operative with share capital constitutes an application for membership and the passing of the resolution authorizing the transfer constitutes admission to membership. ^{Idem}

62. No transfer of a membership in a co-operative without share capital is valid for any purpose whatever, ^{Restrictions on transfer of memberships}

(a) unless a written application for membership by the transferee has been approved by a resolution of the directors of the co-operative or by a person authorized by such a resolution to approve such applications; and

(b) until notification of the approval under clause *a* has been sent the transferee and his name has been entered on a register of members,

except only as evidence of the rights of the parties thereto towards each other.

63.—(1) Subject to the by-laws of the co-operative, a person of the full age of sixteen years or more may become a member thereof. ^{Eligible age for members}

(2) Any person under the full age of eighteen years admitted to membership in the co-operative is competent to enter into any contract with the co-operative, and with respect to contracts with the co-operative is *sui juris*. ^{Members sui juris}

64.—(1) Subject to section 67, a member may withdraw from a co-operative by giving to the secretary of the co-operative six months notice of his intention to withdraw. ^{Notice of withdrawal}

(2) A deceased member shall be deemed to have given notice to the co-operative on the day of his death of his intention to withdraw. ^{Idem}

(3) Subject to subsection 4, where notice of intention to withdraw has been given to a co-operative under subsection 1, ^{Repayment to members on withdrawal}

or is deemed to have been given under subsection 2, the co-operative shall, within six months of the receipt thereof,

- (a) purchase for an amount equal to the par value together with all dividends declared but unpaid or for an amount that is less than par value and that is agreed to by the co-operative and the member or his personal representative, all shares in the co-operative held by the member; and
- (b) pay to him or his personal representative all amounts held to his credit, excluding term loans, together with any interest accrued thereon and the amount outstanding on loans made to the co-operative by the member that are repayable on demand by the member together with any interest accrued thereon.

Election by
member

(4) Notwithstanding subsection 3, a member who has given notice under subsection 1 may elect in such notice to retain all or some of his shares or loans in the co-operative.

Idem

(5) Where an election is made under subsection 4, the person may later withdraw some or all of his shares or loans from the co-operative by giving notice to the co-operative in the manner prescribed by subsection 1, and the co-operative shall, within six months of the receipt thereof,

- (a) purchase the shares at their par value or at a value that is less than par value and that is agreed to by the co-operative and such person;
- (b) pay to him the amounts held to his credit together with any interest accrued thereon; and
- (c) pay to him the amount outstanding on loans repayable on demand together with any interest accrued thereon,

that are referred to in the notice.

Extension
of time for
repayment

(6) Where, in the opinion of the directors of the co-operative, payments in accordance with subsection 3 or 5 would not be in the best interests of the co-operative, the directors may by resolution extend such payments over a period of not more than five years and pay in each year not less than 20 per cent of the amount to be repaid under subsection 3 or 5.

Dealing by
co-operative
with personal
representa-
tives

65.—(1) Where a person is shown on the records of a co-operative as holding a share as a personal representative, the receipt by such person is a valid and binding discharge to the co-operative for any payment or other distribution made in respect of the share whether notice of any trust has been

given to the co-operative or not, and the co-operative is not bound to see to the application of such payment or other distribution.

(2) Where shares are purchased by a co-operative under subsection 1 of section 32 or subsection 3 of section 64 or section 66 or accepted under subsection 1 of section 33 and are not thereby cancelled, no person is entitled to receive notice of or to vote at meetings of members or to receive any payment in respect of the shares whether by way of dividend or otherwise until such shares are resold. ^{Co-operative not to vote, etc.}

66.—(1) A member may be expelled from membership in a co-operative by resolution passed by a majority of the board of directors at a meeting duly called for the purpose not later than thirty days before the date set for the annual meeting of the co-operative. ^{Expulsion of member}

(2) A resolution under subsection 1 is not valid unless, ^{Validity}

- (a) prior written notice is given to the member setting forth the grounds upon which it is sought to expel him;
- (b) the notice is given such member ten days or more before the date of the meeting of the board of directors called to consider the resolution expelling that member; and
- (c) an opportunity is given such member to appear, either personally or by an agent or counsel, to make submissions at the meeting of the board of directors called to consider the resolution expelling that member.

(3) The secretary of the co-operative shall, within five days of the date of the meeting of the board of directors referred to in subsection 1, notify the member of the decision of the board by registered letter addressed to him at his latest known address. ^{Notice of decision}

(4) Where a resolution expelling a member is passed under subsections 1 and 2, the member may appeal the decision of the board of directors at the next annual or general meeting of members and the members by majority vote may confirm, vary or set aside that resolution. ^{Appeal by member}

(5) A member who wishes to appeal his expulsion to a meeting of members shall give notice of his intention to appeal within twenty-one days of receipt of the notice of expulsion mentioned in subsection 3, and the directors shall, if written representations are received seven or more days before the mailing of the notice of the meeting, at the expense of the co-operative, forward with the notice of the meeting a ^{Idem}

copy of such representations to each member entitled to receive notice of the meeting.

Effect of
expulsion

(6) Where a member has been expelled, the co-operative shall purchase from the member, within one year after his expulsion became final, at par value all his shares in the capital of the co-operative together with all amounts held to his credit together with any interest accrued thereon and the amount outstanding on loans, made to the co-operative by the member that are repayable on demand by the member together with interest accrued thereon.

Whereabouts
of member
unknown

(7) If the whereabouts of a member is unknown to the co-operative after all reasonable efforts have been made to ascertain his address for the purpose of making payment to him under subsection 6, amounts payable thereunder to him shall be transferred to a reserve fund of the co-operative; and any amounts so transferred shall, if claimed within thirty years after being so transferred by a person who produces evidence to the satisfaction of the directors of the co-operative that he is entitled thereto, be paid over to such person and, after the expiration of such thirty-year period, any amount so transferred shall be forfeited to the co-operative and transferred out of the reserve fund to it.

Where
repayment
not to be
made

67.—(1) A co-operative shall not exercise its powers under section 64 or 66,

- (a) if the co-operative is insolvent or if the exercise of its powers under that section would render the co-operative insolvent; or
- (b) if such exercise of its powers would in the opinion of the board of directors be detrimental to the financial stability of the co-operative.

Shares to be
cancelled or
resold

(2) Where the shares of a member are acquired under section 64 or 66,

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the co-operative are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
 - (i) the board of directors may at the time of the purchase cancel the shares, in which case the authorized and issued capital of the co-

operative are thereby decreased and the articles are amended accordingly ; or

- (ii) the board of directors may resell the shares at such time and price and on such terms as it determines.

Member's Rights

68.—(1) Subject to subsection 2, a member of a co-operative may maintain an action in a representative capacity for and on behalf of the co-operative to enforce any right, duty or obligation owed to the co-operative under this Act or under any other statute or rule of law or equity that could be enforced by the co-operative itself, or to obtain damages for any breach of any such right, duty or obligation. Derivative action

(2) An action under subsection 1 shall not be commenced until the member has obtained an order of the court permitting the member to commence the action. Leave

(3) A member may, upon at least seven days notice to the co-operative, apply to the court for an order referred to in subsection 2, and, if the court is satisfied that, Application for order to commence action

- (a) the member was a member of the co-operative at the time of the transaction or other event giving rise to the cause of action ;
- (b) the member has made reasonable efforts to cause the co-operative to commence or prosecute diligently the action on its own behalf ; and
- (c) the member is acting in good faith and it is *prima facie* in the interests of the co-operative or its members that the action be commenced,

the court may make the order upon such terms as the court thinks fit, except that the order shall not require the member to give security for costs.

(4) At any time or from time to time while the action commenced under this section is pending, the plaintiff may apply to the court for an order for the payment to the plaintiff by the co-operative of reasonable interim costs including solicitor's and counsel fees and disbursements, for which interim costs the plaintiff shall be accountable to the co-operative if the action is dismissed with costs on final disposition at the trial or on appeal. Application for order for interim costs

Trial and
judgment

(5) An action commenced under this section shall be tried by the court and its judgment or order in the cause, unless the action is dismissed with costs, may include a provision that the reasonable costs of the action are payable to the plaintiff by the co-operative or other defendants taxed as between a solicitor and his own client.

Discontin-
uance and
settlement

(6) An action commenced under this section shall not be discontinued, settled or dismissed for want of prosecution without the approval of the court and, if the court determines that the interests of the members may be substantially affected by such discontinuance, settlement or dismissal, the court, in its discretion, may direct that notice in manner, form and content satisfactory to the court shall be given, at the expense of the co-operative or any other party to the action as the court directs to the members thereof whose interests the court determines will be so affected.

Rights of
dissenting
members

69.—(1) If, at a meeting of members of a co-operative,

- (a) a resolution passed by the directors authorizing the sale, lease, exchange or other disposition of all or substantially all the property of the co-operative is confirmed with or without variation by the members;
- (b) a resolution approving an agreement for the amalgamation of the co-operative with one or more other co-operatives is passed by the members;
- (c) a resolution passed by the directors approving the conversion of the co-operative into a corporation to which *The Business Corporations Act* applies is confirmed with or without variation by the members;
- (d) a resolution passed by the directors approving the conversion of the co-operative into one with or without share capital is confirmed with or without variation by the members; or
- (e) a resolution passed by the directors under section 159 is confirmed with or without variation by the members,

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any member who has voted against the confirmation of the resolution may within ten days after the date of the meeting give notice in writing to the co-operative requiring it to purchase his shares or refund the amount outstanding on loans made to the co-operative by the member together with any interest accrued thereon.

Co-operative
bound to
purchase
shares

(2) Within ninety days from,

- (a) the date of the completion of the sale, lease, exchange or other disposition;
- (b) the date set forth in the certificate of amendment or amalgamation; or
- (c) the date of delivery to the Minister of a request in writing for his authorization under section 159,

the co-operative, or amalgamated co-operative, shall purchase the shares of, or refund the amount outstanding on loans made to the co-operative by, every member who has given notice under subsection 1, and every such member shall sell or deliver up his securities to the co-operative.

(3) The amount and terms of the purchase of a member's shares shall be at their par value or at a value that is less than par value and that is agreed to by the co-operative and the member together with all amounts held to his credit and with interest accrued thereon. ^{Purchase price}

(4) The amount and terms of the repayment of any loans made by the member to the co-operative shall be at the full amount outstanding together with any interest accrued thereon and unpaid. ^{Idem}

(5) The co-operative shall not purchase any shares or repay any member's loans under subsection 2 or 3 if it is insolvent or if the purchase or repayment would render it insolvent. ^{Saving}

(6) If the sale, lease, exchange or other disposition is not completed, the certificate of amendment or amalgamation is not issued, or the authorization of the Minister is not given, the rights of the dissenting member under this section cease and the co-operative shall not purchase the shares of the member nor refund the amount outstanding on loans made to the co-operative by the member under this section. ^{Idem}

(7) Nothing in this section shall require a co-operative to repay a member's term loan before the date of maturity. ^{Idem}

70.—(1) Ten per cent of the members of a co-operative may requisition the directors to call a meeting of the directors for the purpose of passing any by-law or resolution that may properly be passed at a meeting of the directors duly called, constituted and held for that purpose. ^{Requisition for by-law or resolution}

(2) The requisition shall set out the by-law or resolution, as the case may be, that is required to be passed at the meeting and shall be signed by the requisitionists and deposited at the head office of the co-operative, and may consist of several documents in like form, each signed by one or more requisitionists. ^{Form of requisition}

Meeting of
directors

(3) Upon deposit of the requisition, the directors shall forthwith call a meeting of the directors for the purpose of passing the by-law or resolution, as the case may be, set out in the requisition.

Meeting of
members

(4) Where the directors do not, within twenty-one days from the date of the deposit of the requisition,

(a) call and hold such a meeting and pass such a by-law or resolution; and

(b) call a general meeting of the members for the purpose of confirming the by-law or resolution if the resolution requires confirmation at a general meeting of the members before it is effective,

any of the requisitionists may call a general meeting of the members for the purpose of passing such a by-law or resolution, and the meeting shall be held within sixty days from the date of the deposit of the requisition.

Notice

(5) A meeting of the members called under subsection 4 shall be called as nearly as possible in the same manner as meetings of members are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.

Validity of
by-law or
resolution

(6) Where a by-law or resolution is passed at a meeting of the members called under subsection 4, either as set out in the requisition or as varied at the meeting, it is as valid and effective as if it had been passed at a meeting of the directors duly called, constituted and held for that purpose and confirmed at a meeting of the members duly called, constituted and held for that purpose, and if the resolution or by-law is passed by at least two-thirds of the votes cast at a meeting of the members called under subsection 4, it shall be conclusively deemed to be a special resolution or a by-law, as the case may be, for the purposes of this Act.

Repayment
of expenses

(7) The co-operative shall,

(a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the failure of the directors to act in accordance with subsections 3 and 4; and

(b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such

of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting called under subsection 4, the members, by a majority of the votes cast, reject the reimbursement of the requisitionists.

(8) Where a by-law or resolution in respect of which a meeting of directors is requisitioned under this section is not passed or confirmed at a meeting of the members, no requisition for a meeting of directors in respect of a similar by-law or resolution shall be made for a period of at least two years.

New requisition on same subject

71.—(1) On the requisition in writing of 5 per cent of the members of the co-operative, the directors shall,

Circulation of members' resolutions, etc.

- (a) give to the members entitled to notice of the next meeting of members notice of any resolution that may properly be moved and is intended to be moved at that meeting; or
- (b) circulate to the members entitled to vote at the next meeting of members a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or with respect to the business to be dealt with at that meeting.

(2) The notice or statement or both, as the case may be, shall be given or circulated by sending a copy thereof to each member entitled thereto in the same manner and at the same time as that prescribed by this Act, the articles or the by-laws, for the sending of notice of meetings of members.

Notice

(3) Where it is not practicable to send the notice or statement or both at the same time as the notice of the meeting is sent, the notice or statement or both shall be sent as soon as practicable thereafter.

Idem

(4) The directors are not bound under this section to give notice of any resolution or to circulate any statement unless,

Deposit of requisition, etc.

- (a) the requisition, signed by the requisitionists, is deposited at the head office of the co-operative,
 - (i) in the case of a requisition requiring notice of a resolution to be given, not less than twenty-one days before the meeting,
 - (ii) in the case of a requisition requiring a statement to be circulated, not less than fourteen days before the meeting; and

- (b) there is deposited with the requisition a sum reasonably sufficient to meet the expenses of the co-operative in giving effect thereto.

Where directors not bound to circulate statement

(5) The directors are not bound under this section to circulate any statement if, on the application of the co-operative or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and on any such application the court may order the costs of the co-operative to be paid in whole or in part by the requisitionists notwithstanding that they are not parties to the application.

Where no liability

(6) No co-operative or a director, officer or employee thereof or person acting on its behalf, except a requisitionist, is liable in damages or otherwise by reason only of the giving of a notice or the circulation of a statement, or both, in compliance with this section.

Duty to deal with requisitioned matter

(7) Notwithstanding anything in the by-laws of the co-operative, where the requisitionists have complied with this section, the resolution, if any, mentioned in the requisition shall be dealt with at the meeting to which the requisition relates.

Repayment of expenses

(8) The co-operative shall pay to the requisitionists the sum deposited under clause *b* of subsection 4 unless at the meeting to which the requisition relates the members by a majority of the votes cast reject the repayment to the requisitionists.

Liabilities of Members

Liability on decrease of issued capital

72.—(1) Where the issued loan or share capital of a co-operative is decreased by an amendment to the articles, each person who was a member on the effective date of the amendment is individually liable to the creditors of the co-operative for the debts due on that date to an amount not exceeding the amount of the repayment to him.

Limitation of liability

(2) A person is not liable under subsection 1 unless,

- (a) the co-operative has been sued for the debt within six months after the effective date of the amendment and execution has been returned unsatisfied in whole or in part; and
- (b) he is sued for the debt in a court of competent jurisdiction within two years from the effective date of the amendment.

(3) After execution has been so returned, the amount due ^{Idem} on the execution, not exceeding the amount of the repayment to the person, is the amount recoverable against such person.

(4) Where it is made to appear that there are numerous ^{Class} members who may be liable under this section, the court ^{actions} of competent jurisdiction may permit an action to be brought against one or more of them as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such members as may be found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sum so determined.

(5) No person holding shares or loans in the capacity of a ^{Member in} personal representative and registered on the records of the ^{fiduciary} co-operative as a member and therein described as representing ^{capacity} in such capacity a named estate, person or trust is personally liable under this section, but the estate, person or trust is subject to all liabilities imposed by this section.

73. A member of a co-operative as such is not answerable ^{Member's} or responsible for any act, default, obligation or liability of the ^{liability} co-operative or for any engagement, claim, payment, loss, ^{limited} injury, transaction, matter or thing relating to or connected with the co-operative.

Meetings of Members

74.—(1) Subject to subsections 2 and 3, the meetings of ^{Place of} the members shall be held at the place where the head office ^{meetings} of the co-operative is located.

(2) Where the by-laws of the co-operative so provide, the ^{Exception} meetings of the members may be held at any place within Ontario.

(3) Where the articles of the co-operative so provide, the ^{Idem} meetings of the members may be held at one or more places outside Ontario specified therein.

75.—(1) Subject to subsection 2 and in the absence of other ^{Members'} provisions in that behalf in the articles or by-laws of the ^{meetings} co-operative,

- (a) notice of the time and place for holding a meeting of the members shall be given to each person who is entitled to notice of meetings and who on the record date for notice appears on the records of the co-

operative as a member by sending the notice by pre-paid mail to his latest address as shown on the records of the co-operative ten days or more before the date of the meeting but in no case more than fifty days before the date of the meeting;

- (b) all questions proposed for the consideration of the members at a meeting of members shall be determined by the majority of the votes cast, and the chairman presiding at the meeting has a second or casting vote in case of an equality of votes;
- (c) the chairman presiding at a meeting of members may, with the consent of the meeting and subject to such conditions as the meeting decides, adjourn the meeting from time to time and from place to place;
- (d) the president or, in his absence, a vice-president who is a director shall preside as chairman at a meeting of members, but, if there is no president or such a vice-president or if at a meeting neither of them is present within fifteen minutes after the time appointed for the holding of the meeting, the members present shall choose a person from their number to be the chairman;
- (e) unless a poll is demanded, an entry in the minutes of a meeting of members to the effect that the chairman declared a motion to be carried is admissible in evidence as *prima facie* proof of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

Notice

(2) The articles or by-laws of the co-operative shall not provide for fewer than ten days notice for meetings of members and in no case shall notice be given fifty days before the date of the meeting and the articles or by-laws shall not provide that notice may be given otherwise than individually.

Poll

(3) If a poll is demanded, it shall be taken in such manner as the by-laws prescribe, and, if the by-laws make no provision therefor, then as the chairman directs.

Voting

76. (1) A member of a co-operative has only one vote.

Proxies
prohibited

(2) Subject to subsection 3, no member of a co-operative shall vote by proxy.

Voting by
corporation

(3) A corporate member may appoint under its corporate seal one of its directors or officers to attend and vote on its

behalf at meetings of members and such director or officer has only one vote.

77. A co-operative shall hold an annual meeting of its members not later than eighteen months after its incorporation and subsequently not more than fifteen months after the holding of the last preceding annual meeting and at such meeting any member shall have an opportunity to raise any matter relevant to the affairs and business of the co-operative. Annual meetings

78. The directors may at any time call a general meeting of the members for the transaction of any business, the general nature of which is specified in the notice calling the meeting. General meetings

79.—(1) Five per cent of the members of a co-operative may requisition the directors to call a general meeting of the members for any purpose that is connected with the affairs of the co-operative and that is not inconsistent with this Act. Requisition for members' meeting

(2) The requisition shall state the general nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the head office of the co-operative and may consist of several documents in like form, each signed by one or more requisitionists. Requisition

(3) Upon deposit of the requisition, the directors shall forthwith call a general meeting of the members for the transaction of the business stated in the requisition. Duty of directors to call meeting

(4) If the directors do not within thirty days from the date of the deposit of the requisition call and hold the meeting, any of the requisitionists may call the meeting, which shall be held within sixty days from the date of the deposit of the requisition. When requisitionists may call meeting

(5) A meeting called under this section shall be called as nearly as possible in the same manner as meetings of members are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting. Calling of meeting

(6) The co-operative shall, Repayment of expenses

(a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the action taken by them under subsection 4; and

(b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services,

to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting, the members by a majority of the votes cast reject the reimbursement of the requisitionists.

Requisition
by court
order

80. Notwithstanding section 79, upon application by a member of a co-operative, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the co-operative or its members that the meeting be held on requisition, may make an order, upon such terms as to security for the costs of holding the meeting or otherwise as to the court seem fit, requiring the directors to call a general meeting of the members for any purpose that is connected with the affairs of the co-operative and that is not inconsistent with this Act.

Court may
direct
method of
holding
meetings

81. If for any reason it is impracticable to call a meeting of members of a co-operative in any manner in which meetings of members may be called or to conduct the meeting in the manner prescribed by this Act, the articles or by-laws, the court may, on the application of a director or a member who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the court thinks fit, and any meeting called, held and conducted in accordance with the order shall for all purposes be deemed to be a meeting of members of the co-operative duly called, held and conducted.

Record
dates

82. The by-laws may provide for the fixing in advance of a date as the record date,

- (a) for the determination of the members entitled to notice of meetings of the members, which record date for notice shall not be more than fifty days before the date of the meeting and not fewer than the minimum number of days for notice of the meeting and where no such record date for notice is fixed, the record date for notice shall be at the close of business on the day next preceding the day on which notice is given or sent; and
- (b) for the determination of the members entitled to vote at meetings of the members which record date for voting shall not be more than two days, excluding Saturdays and holidays, before the date of the meeting and where no such record date for voting is fixed, the record date for voting shall be the time of the taking of the vote.

83.—(1) Where a person holds shares as a personal representative of a member, the personal representative is entitled to vote at all meetings of members. ^{Personal representative}

(2) Where a person mortgages or hypothecates his shares, that person is the person entitled to vote at all meetings of members unless, in the instrument creating the mortgage or hypothec, he has expressly empowered the person holding the mortgage or hypothec to vote, in which case, subject to the articles, such holder is the person entitled to vote. ^{Mortgagee, etc.}

84. Where two or more persons hold the same share or shares jointly, any one of such persons present at a meeting of members has the right in the absence of the other or others to vote, but, if more than one of such persons are present and vote, they shall vote together as one on the share or shares jointly held by them. ^{Joint shareholders}

DIRECTORS AND OFFICERS

Directors

85.—(1) Every co-operative shall have a board of directors however designated. ^{Board of directors}

(2) The board of directors shall consist of a fixed number of directors, not fewer than five. ^{Composition}

(3) A majority of directors on the board of directors of every co-operative shall be resident Canadians. ^{Idem}

86.—(1) Each of the persons named as first directors in the articles of a co-operative is a director of the co-operative until replaced by a person duly elected or appointed in his stead. ^{First directors}

(2) The first directors of a co-operative have all the powers and duties and are subject to all the liabilities of directors. ^{Idem}

87. No person shall be a director of a co-operative unless he is a member thereof or a director, officer, shareholder or member of a corporate member thereof, and, where a director or a corporation of which he is an officer, director, shareholder or member ceases to be a member, he thereupon ceases to be a director. ^{Directors to be members}

88.—(1) A co-operative may by by-law increase or, subject to subsection 2 of section 85, decrease the number of its directors as set out in its articles. ^{Change in number of directors}

(2) Where a co-operative incorporated under *The Corporations Act* or a predecessor of that Act or under a general or special Act of the Legislature before the coming into ^{R.S.O. 1970, c. 89}

force of this Act has fewer than five directors, it shall, under subsection 1, within two years of the coming into force of this Act, increase the number of its directors to not fewer than five.

Filing of
by-law

(3) A co-operative shall file with the Minister a certified copy of the by-law within ten days after the by-law has been confirmed by the members.

Validity

(4) Failure to comply with subsection 3 does not affect the validity of the by-law.

Age of
directors

89.—(1) No person under eighteen years of age shall be a director of a co-operative.

Qualifications

(2) No undischarged bankrupt or mentally incompetent person shall be a director, and, if a director becomes a bankrupt or a mentally incompetent person, he thereupon ceases to be a director.

Consent

(3) A person who is elected or appointed a director is not a director unless,

(a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as director;

(b) where he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.

Idem

(4) For the purposes of subsection 3, a person who is elected or appointed as director and refuses under clause *a* of subsection 3 or fails to consent under clause *b* of subsection 3 shall be deemed not to have been elected or appointed as a director.

Election of
directors

90.—(1) The directors shall be elected by the members in general meeting, and the election shall be by ballot in the manner prescribed by section 91.

Idem

(2) The election of directors shall take place yearly or at such other interval not exceeding five years as is provided by the articles and all the directors then in office shall retire, but are eligible for re-election.

Continuance
in office

(3) If an election of directors is not held within the prescribed period, the directors continue in office until their successors are elected.

(4) The articles or by-laws may provide for the election and retirement of directors in rotation, but in that case no director shall be elected for a term of more than five years and at least two directors shall retire from office in each year. Rotation

(5) It shall not be necessary for all directors to hold office for the same term. Idem

91. Every member entitled to vote at an election of directors, if he votes, shall cast thereat a number of votes equal to the number of directors to be elected, and the member shall distribute the votes among the candidates in such manner as he sees fit, but no candidate shall receive more than one vote from each member. Voting for directors

92.—(1) Subject to subsection 2, where a vacancy occurs in the board, and a quorum of directors remains, the directors remaining in office may appoint a qualified person to fill the vacancy for the remainder of the term, but the articles may provide that such vacancy may only be filled by election at a general meeting of the members duly called for that purpose. Vacancies

(2) Where the number of directors is increased, the vacancies resulting from such increase shall only be filled by election at a general meeting of the members duly called for that purpose. Idem

(3) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a general meeting of the members to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any member. Idem, where no quorum

93. Unless the articles or by-laws otherwise provide, a majority of the board of directors constitutes a quorum, but in no case shall a quorum be less than two-fifths of the board of directors. Quorum of directors

94.—(1) Subject to subsection 2, the meetings of the board of directors and the executive committee shall be held at the place where the head office of the co-operative is located. Place of meetings

(2) Where the by-laws of the co-operative so provide, the meetings of the board of directors and of the executive committee may be held at any place within or outside Ontario, but in any financial year of the co-operative a majority of the meetings of the board of directors and a majority of the meetings of the executive committee shall be held at a place within Canada. Exception

(3) Subject to the by-laws of the co-operative, where all the directors have consented thereto, any director may par- Meetings by telephone

ticipate in a meeting of the board of directors or of the executive committee by means of conference, telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a director participating in a meeting pursuant to this subsection shall be deemed for the purposes of this Act to be present in person at that meeting.

Place of
meetings by
telephone

(4) If a majority of the directors participating in a meeting held pursuant to subsection 3 are then in Canada, the meeting shall be deemed to have been held in Canada.

Calling
meetings of
directors

95.—(1) In addition to any other provision in the articles or by-laws of a co-operative for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting.

Notice

(2) In the absence of any other provision in that behalf in the by-laws of the co-operative, notice of the time and place for the holding of the meeting called under subsection 1 shall be given to every director of the co-operative by sending the notice by prepaid mail ten days or more before the date of the meeting to his latest address as shown on the records of the co-operative.

Duties

96.—(1) The board of directors shall manage or supervise the management of the affairs and business of the co-operative.

Conduct of
business

(2) Subject to section 97, no business of a co-operative shall be transacted by its board of directors except at a meeting of directors at which a quorum of the board is present and at which a majority of the directors present are resident Canadians.

Idem

(3) Where there is a vacancy or vacancies in the board of directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office.

Executive
committee

97.—(1) Where the number of directors of a co-operative is more than six, and if authorized by a by-law, the directors may elect from among their number an executive committee consisting of not fewer than three of whom a majority shall be resident Canadians and may delegate to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors.

Quorum

(2) An executive committee may fix its quorum, which shall be not less than a majority of its members.

(3) No business shall be transacted by an executive committee except at a meeting of its members at which a quorum of the executive committee is present and at which a majority of the members present are resident Canadians. Conduct of business

98.—(1) Every director of a co-operative who has, directly or indirectly, any interest in any contract or transaction to which the co-operative or a subsidiary thereof is or is to be a party, other than a contract or transaction in which his interest is limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the co-operative and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of property by or to the co-operative or a subsidiary thereof, the cost of the property to the purchaser and the cost thereof to the seller, if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such interest or information is within his knowledge or control, and shall not vote and shall not in respect of such contract or transaction be counted in the quorum. Disclosure by directors of interests in contracts

(2) Subsection 1 does not require the disclosure of any interest in any contract or transaction unless, Interest to be material

- (a) the interest and the contract or transaction are both material; or
- (b) the subject of the contract or transaction is of a type not available to all members of the co-operative.

(3) The declaration required by this section shall be made at the meeting of the directors at which the proposed contract or transaction is first considered, or if the director is not at the date of the meeting interested in the proposed contract or transaction, at the next meeting of the directors held after he becomes so interested, or if the director becomes interested in a contract or transaction after it is entered into, at the first meeting of the directors held after he becomes so interested, or if a contract or a proposed contract or transaction is one that in the ordinary course of the co-operative's business, would not require approval by the directors or shareholders, at the first meeting of the directors held after the director becomes aware of it. When declaration of interest to be made

(4) If a director has made a declaration and disclosure of his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the co-operative, the director, if he was acting honestly and in good Effect of declaration

faith at the time the contract or transaction was entered into, is not by reason only of his holding the office of director accountable to the co-operative or to its members for any profit or gain realized from the contract or transaction, and the contract or transaction, if it was in the best interests of the co-operative at the time the contract or transaction was entered into, is not voidable by reason only of the director's interest therein.

Confirmation
by members

(5) Notwithstanding anything in this section, a director, if he was acting honestly and in good faith, is not accountable to the co-operative or to its members for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction, if it was in the best interests of the co-operative at the time it was entered into, is not by reason only of the director's interest therein voidable,

- (a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose; and
- (b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting.

General
notice of
interest

(6) For the purposes of this section, a general notice to the directors by a director declaring that he is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the co-operative is a sufficient declaration of interest in relation to any contract so made.

Liability of
directors re
purchase of
shares

99.—(1) Where a co-operative acquires any of its shares or repays any of its loans in contravention of this Act or the articles, the directors who voted in favour of or consented to the resolution authorizing the acquisition or repayment are jointly and severally liable to the co-operative to the extent of the amount paid out.

Application
to court

(2) Where a co-operative acquires any of its shares or repays any of its loans in contravention of this Act or the articles,

- (a) any member of the co-operative; or
- (b) where the acquisition or repayment is in contravention of subsection 2 of section 32, subsection 1

of section 67 or section 69, any creditor of the co-operative who was a creditor at the time of the acquisition or repayment,

may apply to the court within two years of the acquisition or repayment and the court may, if it considers it to be just and equitable under the circumstances, make an order making any member whose shares were acquired liable to the co-operative jointly and severally with the directors, to the extent of the amount paid to him.

100. Where any dividend is declared and paid in contra-
vention of section 58, Liability
of directors
re dividends

- (a) the directors who voted in favour of or consented to the resolution authorizing the declaration of the dividend are jointly and severally liable to the co-operative to the extent of the amount of the dividend so declared and paid or such part thereof as renders the co-operative insolvent or diminishes its capital; and
- (b) any member of the co-operative or any creditor of the co-operative who was a creditor at the time of the declaration of the dividend may apply to the court within two years of the declaration, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any member to whom the dividend is paid jointly and severally liable with the directors to the extent of the amount of the dividend paid to him.

101.—(1) A director who was present at a meeting of the
board of directors or an executive committee thereof when, Consent of
director at
meeting

- (a) the redemption or purchase of shares of the co-operative is authorized;
 - (b) the declaration and payment of a dividend is authorized; or
 - (c) the repayment of loans to members is authorized,
- shall be deemed to have consented thereto unless,
- (d) his dissent is entered in the minutes of the meeting;
 - (e) he files his written dissent with the person acting as secretary of the meeting before its adjournment; or

- (f) he delivers or sends his dissent by registered mail to the co-operative immediately after the adjournment of the meeting,

and within seven days after complying with clause *d*, *e* or *f* he sends a copy of his dissent by registered mail to the Minister.

Idem

(2) A director who voted in favour of a matter referred to in subsection 1 is not entitled to dissent under subsection 1.

Consent of director not at meeting

(3) A director who was not present at a meeting of the board of directors or any executive committee thereof when,

(a) the redemption or purchase of shares of the co-operative is authorized;

(b) the declaration and payment of a dividend is authorized; or

(c) the repayment of loans to members is authorized,

shall be deemed to have consented thereto unless,

(d) he delivers or sends to the co-operative by registered mail his dissent; or

(e) he causes his dissent to be filed with the minutes of the meeting,

within seven days after he becomes aware of the authorization referred to in clause *a*, *b* or *c* and unless, within seven days after complying with clause *d* or *e*, he sends a copy of his dissent by registered mail to the Minister.

Exception to liability

102.—(1) A director is not liable under section 99 or 100 if, in the circumstances, he discharged his duty to the co-operative in accordance with section 108.

Liability not excluded

(2) The liability imposed by this Act upon a director is in addition to any other liability that is by law imposed upon him.

Liability of directors for wages
R.S.O. 1970,
cc. 263, 147

103.—(1) The directors of a co-operative are jointly and severally liable to the employees of the co-operative to whom *The Master and Servant Act* applies for all debts that become due while they are directors for services performed for the co-operative, not exceeding six months wages, and for the vacation pay accrued for not more than twelve months under *The Employment Standards Act* and the regulations thereunder or under any collective agreement made by the co-operative.

(2) A director is liable under subsection 1,

Limitation of
liability

(a) only if,

(i) the co-operative has been sued for the debt within six months after it has become due and execution against the co-operative has been returned unsatisfied in whole or in part, or

(ii) the co-operative has within that period gone into liquidation or has been ordered to be wound up or has made an authorized assignment under the *Bankruptcy Act* (Canada), or a receiving order under the *Bankruptcy Act* (Canada) has been made against it and, in any such case, the claim for the debt has been proved; and

R.S.C. 1970,
c. B-3

(b) he is sued for the debt while he is a director or within two years after he ceases to be a director.

(3) After execution has been so returned against the co-operative, the amount recoverable against the director is the amount remaining unsatisfied on the execution.

(4) If the claim for the debt has been proved in liquidation or winding-up proceedings or under the *Bankruptcy Act* (Canada), a director who pays the debt is entitled to any preference that the creditor paid would have been entitled to or, if a judgment has been recovered for the debt, the director is entitled to an assignment of the judgment.

Rights of
director
who pays
the debt

104. The members may, by resolution passed by a majority of the votes cast at a general meeting duly called for that purpose, remove any director before the expiration of his term of office and may, by a majority of the votes cast at the meeting, elect any person in his stead for the remainder of his term.

Removal of
directors

Officers

105.—(1) A co-operative shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors.

Officers

(2) In the absence of other provisions in that behalf in the articles or by-laws, the directors,

Election and
appointment

(a) shall elect the president from among themselves;

- (b) shall appoint or elect the secretary; and
- (c) may appoint or elect one or more vice-presidents or other officers.

Chairman
of the board

106. A co-operative may by by-law,

- (a) provide for the election or appointment by the directors from among themselves of a chairman of the board;
- (b) define the duties of the chairman;
- (c) assign to the chairman all or any of the duties of the president or of any other officer of the co-operative,

and, if the by-law assigns to the chairman any of the duties of the president, it shall also fix and prescribe the duties of the president.

Qualifica-
tions of
chairman
and president

107. Unless the articles or by-laws otherwise provide, no person shall be the president of a co-operative unless he is a director of the co-operative, but no other officer except the chairman of the board need be a director.

General

Standard of
care of
directors and
officers

108. Every director and officer of a co-operative shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the co-operative, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Validity of
acts of
directors and
officers

109. An act done by a director or by an officer is not invalid by reason only of any defect that is thereafter discovered in his appointment, election or qualification.

Indemnifica-
tion of
directors and
officers

110.—(1) Subject to subsection 2, the by-laws of a co-operative may provide that every director and officer of the co-operative and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the co-operative from and against,

- (a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and

- (b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the co-operative.

(2) No director or officer of a co-operative shall be indemnified by the co-operative in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant.

(3) A co-operative may purchase and maintain insurance for the benefit of a director or officer thereof, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of a contravention of section 108.

INSIDERS

111.—(1) Every insider of a co-operative or associate or affiliate of such insider who, in connection with a transaction relating to the securities of the co-operative, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person for any direct loss suffered by such person as a result of the transaction, unless the information was known or ought reasonably to have been known to such person at the time of the transaction, and is also accountable to the co-operative for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of the transaction.

(2) An action to enforce any right created by subsection 1 may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action.

(3) In this section,

(a) “associate”, where used to indicate a relationship with any person, means,

- (i) any corporation of which such person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding,

- (ii) any partner of that person acting by or for the partnership of which they are both partners,
 - (iii) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity,
 - (iv) any spouse, son or daughter of that person, or
 - (v) any relative of such person or of his spouse, other than a relative referred to in subclause iv, who has the same home as such person;
- (b) "insider" or "insider of a co-operative" means any director or senior officer of a co-operative.

Idem

(4) For the purposes of this section, one corporation shall be deemed to be affiliated with another corporation if, but only if, one of them is the subsidiary of the other.

Order to
commence
action

112.—(1) Upon application by any person who was at the time of a transaction referred to in subsection 1 of section 111 or is at the time of the application an owner of securities of the co-operative, the court may, if satisfied that,

- (a) such person has reasonable grounds for believing that the co-operative has a cause of action under section 111; and
- (b) either,
 - (i) the co-operative has refused or failed to commence an action under section 111 within sixty days after receipt of a written request from such person so to do, or
 - (ii) the co-operative has failed to prosecute diligently an action commenced by it under section 111,

make an order, upon such terms as to security for costs and otherwise as to the court seems fit, requiring the Minister to commence or continue an action in the name of and on behalf of the co-operative to enforce the liability created by section 111.

(2) The applicant under subsection 1 shall give to the co-operative and the Minister notice of his application, and the co-operative and the Minister have the right to appear and be heard thereon. Notice

(3) Every order made under subsection 1 shall provide that the co-operative shall co-operate fully with the Minister in the institution and prosecution of the action and shall make available to the Minister all records, documents and other material or information known to the co-operative or reasonably ascertainable by the co-operative relevant to the action. Order to co-operate

RECORDS

113.—(1) Where this Act requires a record to be kept by a co-operative, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device. Records

(2) Where a record is not kept in a bound book, the co-operative shall, Where not in bound book

- (a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and
- (b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the record.

(3) The bound or looseleaf book or, where the record is not kept in a bound or looseleaf book, the information in the form in which it is made available under clause *b* of subsection 2 is admissible in evidence as *prima facie* proof, before and after dissolution of the co-operative, of all facts stated therein. Admissibility of records in evidence

(4) No person shall remove, withhold or destroy information required by this Act or the regulations to be recorded, or, False information

- (a) record or assist in recording any information in a record; or
- (b) make information purporting to be accurate available in a form referred to in clause *b* of subsection 2,

knowing it to be untrue.

114. A co-operative shall cause to be kept the following records: Records

- 1. A copy of the articles of the co-operative.

2. All by-laws and resolutions, including special resolutions of the co-operative.
3. A register of members and security holders in which is set out the names alphabetically arranged or alphabetically indexed in appropriate categories of,
 - i. in a co-operative with share capital, all persons who are or have been within ten years registered as holders of shares in the co-operative and the address including the street and number, if any, of every such person while a holder, in which are set out also the number and class of shares held by such holder,
 - ii. in a co-operative without share capital, all persons who are or have been within ten years registered as members of the co-operative and the address including the street and number, if any, of every such person while a member,
 - iii. in a co-operative with or without share capital, all persons who are or who have been holders of debt obligations other than debt obligations in bearer form of the co-operative and the address including the street and number, if any, of every such person while a holder in which are set out also the class or series and principal amount of the debt obligations held by such holder.
4. A register of directors in which are set out the names and residence addresses while directors, including the street and number, if any, of all persons who are or have been directors of the co-operative with the several dates on which they have become or ceased to be a director.
5. Proper accounting records in which are set out all financial and other transactions of the corporation including, without limiting the generality of the foregoing, records of,
 - i. all sums of money received and disbursed by the co-operative and the matters with respect to which receipt and disbursement took place,
 - ii. all sales and purchases of the co-operative,
 - iii. the assets and liabilities of the co-operative, and

iv. all other transactions affecting the financial position of the co-operative.

6. The minutes of all proceedings at meetings of members, directors and any executive committee.

115. Every co-operative shall cause to be kept a register of transfers in which all transfers of securities issued by the co-operative in registered form and the date and other particulars of each transfer shall be set out. Register of transfers

116. A co-operative may appoint a registrar and a transfer agent to keep the register of security holders and the register of transfers. Transfer agent

117.—(1) The register of security holders and the register of transfers shall be kept at the head office of the co-operative or at such other office or place in Ontario as is appointed by resolution of the directors. Where registers to be kept

(2) Registration of the transfer of a security of the co-operative in the register of transfers is a complete and valid registration for all purposes. Valid registration

(3) A co-operative, registrar or transfer agent is not liable to produce a security certificate or any document that is evidence of the issue or transfer of the security certificate after six years, Destruction of spent documents

(a) in the case of a share certificate from the date of its cancellation; or

(b) in the case of a certificate representing a debt obligation, from the date of retirement of the whole debt obligation of which the certificate represents a part.

118.—(1) The records mentioned in sections 114 and 115 shall, during the normal business hours of the co-operative, be open to examination by any director and shall, except as provided in section 117 and in subsections 2 and 3 of this section, be kept at the head office of the co-operative. Records open to examination by directors

(2) A co-operative may keep at any place where it conducts its affairs such parts of the accounting records as relate to the operations, business and assets and liabilities of the co-operative carried on, supervised or accounted for at such place, but there shall be kept at the head office of the co-operative or such other place as is authorized under subsection 3 such records as will enable the directors to ascertain quarterly with reasonable accuracy the financial position of the co-operative. Records of account at branch

Order for
removal of
records

(3) Where a co-operative,

- (a) shows, to the satisfaction of the Minister, the necessity of keeping all or any of the records mentioned in subsection 1 at a place other than the head office of the co-operative; and
- (b) gives to the Minister adequate assurance, by surety bond or otherwise, that such records will be open for examination,
 - (i) at the head office or some other place in Ontario designated by the Minister, and
 - (ii) by any person who is entitled to examine them and who has applied to the Minister for such an examination,

the Minister may, by order and upon such terms as he thinks fit, permit the co-operative to keep such of them at such place or places, other than the head office, as he thinks fit and the Minister may by order and upon such terms as he sees fit rescind any such order.

Examination
of records
by members
and creditors

119.—(1) Subject to section 120, the records of a co-operative mentioned in section 114 or 115, other than accounting records, resolutions of directors and the minutes of proceedings at meetings of directors and any executive committee, shall, during the normal business hours of the co-operative and at the place or places where they are kept, be open to examination by the members and creditors or their agents or personal representatives, and any of them may make extracts therefrom.

Idem

(2) No person shall refuse to permit a person entitled thereto to inspect such records or to make extracts therefrom.

Lists of
members
and security
holders

120.—(1) Any member or creditor, upon filing with the co-operative or its agent the affidavit referred to in subsection 2 may,

- (a) make or cause to be made; or
- (b) require a co-operative or its transfer agent to make, upon payment of a reasonable charge therefor,

a list setting out the names alphabetically arranged of all or any members or security holders or both of the co-operative and the addresses of each such person as shown on the records of the co-operative made up to a date not more than ten days before the date of filing the affidavit.

(2) The affidavit referred to in subsection 1 shall be made by the applicant and shall be in the following form: ^{Form of affidavits}

Form of Affidavit

Province of Ontario }
County of }

In the matter of
(Insert name of co-operative)

I, of the of
in the of
make oath and say:

(Where the applicant is a corporation, indicate office and authority of deponent.)

1. I am a member or a creditor of the above-named co-operative.
2. I require the list (or require to make a list) of the members (security holders) of the above-named co-operative.
3. I require the list of members (security holders) only for purposes connected with the above-named co-operative.
4. The list of members (security holders) and the information contained therein will be used only for purposes connected with the above-named co-operative.

SWORN, etc.

(3) Where the applicant is a corporation, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the corporation. ^{Idem, where applicant a corporation}

(4) No person shall use a list of all or any of the members of a co-operative obtained under this section, ^{Use of list}

- (a) for the purpose of delivering or sending to all or any of the members advertising or other printed matter relating to securities other than the securities of the co-operative; or
- (b) for any purpose not connected with the co-operative.

(5) Every co-operative or transfer agent shall furnish a list in accordance with subsection 1 when so required. ^{Duty to furnish}

Purposes
of list

(6) Purposes connected with the co-operative include any effort to influence the voting of members or security holders at any meeting thereof.

Trafficking
in lists

121. No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the members of a co-operative.

Power of
court to
correct

122.—(1) Where the name of a person is, without sufficient cause, entered in or omitted from the records of a co-operative other than accounting records, or if default is made or unnecessary delay takes place in entering therein the fact of any person having ceased to be a security holder or member of the co-operative, the person aggrieved, or any security holder or member of the co-operative, or the co-operative itself, may apply to the court for an order that the records be rectified, and the court may dismiss such application or make an order for the rectification of the records and may direct the co-operative to compensate the party aggrieved for any damage he has sustained.

Decision
as to title

(2) Any court may, in any proceeding under this section; decide any question relating to the entitlement of a person who is a party to the proceeding to have his name entered in or omitted from such records whether the question arises between two or more security holders or members or alleged security holders or members, or between any security holders or members or alleged security holders or members and the co-operative.

Trial of
issue

(3) The court may direct an issue to be tried.

Jurisdiction
of court not
affected

(4) This section does not deprive any court of any jurisdiction it otherwise has.

AUDITORS AND FINANCIAL STATEMENTS

Exemption
from audit
provisions

123.—(1) Where in a financial year all the members in a co-operative that,

- (a) has fifteen or fewer members;
- (b) has capital not exceeding \$15,000 as shown on the financial statement of the co-operative for the preceding year; and
- (c) has assets not exceeding \$50,000 and sales or gross operating revenues not exceeding \$100,000, as shown on the financial statement of the co-operative for the preceding year,

consent in writing, the co-operative is exempt from sections 124 and 125, subsections 1 and 2 of section 126, section 127 and clause *b* of subsection 1 and subsection 3 of section 128 in respect of the financial year in which the consent is given.

(2) For the purposes of this section, capital shall be computed by adding together the sums represented by the amounts of, ^{Interpretation of capital}

- (a) member and patronage loans made to the co-operative that are outstanding;
- (b) issued capital determined in accordance with section 29;
- (c) unsecured long-term debt; and
- (d) surplus,

as shown on the financial statement of the co-operative for the preceding year.

124.—(1) The members of a co-operative at their first ^{Auditors} general meeting shall appoint one or more auditors to hold office until the close of the first annual meeting and, if the members fail to do so, the directors shall forthwith make such appointment or appointments.

(2) The members shall at each annual meeting appoint one ^{Idem} or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving ^{Casual vacancy} or continuing auditor, if any, may act.

(4) The members may, by resolution passed by a majority ^{Removal of auditor} of the votes cast at a general meeting duly called for the purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term.

(5) Before calling a general meeting for the purpose speci- ^{Notice to auditor} fied in subsection 4, the co-operative shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor,

- (a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and
- (b) a copy of all material proposed to be sent to members in connection with the meeting.

Right of
auditor to
make repre-
sentations

(6) An auditor has the right to make to the co-operative, three days or more before the mailing of the notice of the meeting, representations in writing, concerning,

- (a) his proposed removal as auditor;
- (b) the appointment or election of another person to fill the office of auditor; or
- (c) his resignation as auditor,

and the co-operative, at its expense, shall forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting.

Remuner-
ation

(7) The remuneration of an auditor appointed by the members shall be fixed by the members, or by the directors if they are authorized so to do by the members, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

Appointment
by court

(8) If for any reason no auditor is appointed, the court may, on the application of a member, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the co-operative for his or their services.

Notice of
appointment

(9) The co-operative shall give notice in writing to an auditor of his appointment forthwith after the appointment is made.

Notice to
auditor of
proposal to
appoint
another

125.—(1) If, at an annual meeting of members, it is proposed to appoint an auditor, other than the incumbent auditor, the co-operative shall, fifteen days or more before the mailing of the notice of meeting, give to the incumbent auditor a written notice of management's intention not to recommend his re-appointment at the annual meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed.

Right of
incumbent
auditor to
make rep-
resentations

(2) The incumbent auditor has the right to make to the co-operative, three days or more before the mailing of the notice of the meeting, representations in writing concerning the proposal not to reappoint him as auditor, and the co-operative,

at its expense, shall forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting.

126.—(1) No person shall be appointed or act as auditor of a co-operative who is a director, officer or employee, or who has been, during the two years immediately preceding the proposed date of his appointment as auditor, a director, officer or employee of the co-operative or who is a partner, employer or employee of such director, officer or employee or who is a related person to any director or officer of the co-operative. Persons disqualified as auditors

(2) No person shall be appointed to act as auditor of a co-operative if he or any partner or employer of or related person to him transacts a material amount of business with the co-operative. Idem

(3) No person shall be appointed a receiver or a receiver and manager or liquidator of any co-operative of which he or any partner or employer of or a related person to him is the auditor or has been auditor within the two years preceding his appointment as receiver or receiver and manager or liquidator. Auditors not to be appointed receivers, etc.

(4) No person who is appointed a trustee of the estate of a co-operative under the *Bankruptcy Act* (Canada) or any partner or employer of or a related person to him shall be appointed or act as auditor of the co-operative. Trustee in bankruptcy not to be auditor
R.S.C. 1970, c. B-3

127.—(1) The auditor shall make such examination as will enable him to report to the members as required by subsection 2. Annual audit

(2) The auditor shall make a report to the members on the financial statement, other than the part thereof that relates to the period referred to in subclause ii of clause a of subsection 1 of section 128, to be laid before the co-operative at any annual meeting during his term of office and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the co-operative and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. Auditor's report

(3) Where the report under subsection 2 does not contain the unqualified opinion required thereby, the auditor shall state in his report the reasons therefor. Idem

(4) Where facts come to the attention of the officers or directors, Facts discovered after statement

- (a) which could reasonably have been determined prior to the date of the last annual meeting of the members; and
- (b) which if known prior to the date of the last annual meeting of members, would have required a material adjustment to the financial statement presented to the meeting,

the officers or directors shall communicate such facts to the auditor who reported to the members under this section and the directors shall forthwith amend the financial statement and send it to the auditor.

Amendment
of auditor's
report

(5) On the receipt of facts furnished under subsection 4 or from any other source, the auditor shall, if in his opinion it is necessary, amend his report in respect of the financial statement in accordance with subsection 3 and the directors or, if they fail to do so within a reasonable time, the auditor shall mail such amended report to the members.

Idem

(6) If the financial statement contains a statement of changes in net assets or a statement of source and application of funds, the auditor shall include in his report a statement whether in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein.

Idem

(7) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a co-operative are included in the financial statement of the co-operative, the report of the auditor of the co-operative required by subsection 2 may refer to the reports of auditors of one or more of such subsidiaries, but such reference shall not derogate from the duty of the auditor of the co-operative to comply with subsection 2.

Idem

(8) The auditor in his report shall make such statements as he considers necessary,

- (a) if the co-operative's financial statement is not in agreement with its accounting records;
- (b) if the co-operative's financial statement is not in accordance with the requirements of this Act;
- (c) if he has not received all the information and explanations that he has required; or
- (d) if proper accounting records have not been kept, so far as appears from his examination.

(9) The auditor of a co-operative has right of access at all times to all records, documents, accounts and vouchers of the co-operative and is entitled to require from the directors, officers and employees of the co-operative such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. Right of access, etc.

(10) The auditor of a co-operative has right of access at all times to all records, documents, accounts and vouchers of all subsidiaries of the co-operative and is entitled to require from the directors, officers and employees of each such subsidiary such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. Idem

(11) Where a subsidiary referred to in subsection 10 is a corporation to which this Act does not apply, the co-operative shall make available to its auditor the records, documents, accounts and vouchers of that subsidiary and shall require the directors, officers and employees of that subsidiary to make available to its auditor the information and explanation required by subsection 10. Idem

(12) The auditor of a co-operative is entitled to attend any meeting of members of the co-operative and to receive all notices and other communications relating to any such meeting that a member is entitled to receive, and to be heard at any such meeting that he attends on any part of the business of the meeting that concerns him as auditor. Auditor may attend members' meetings

(13) Any member of a co-operative, whether or not he is entitled to vote at meetings of members, may, by notice in writing to the co-operative given five days or more before any meeting of members, require the attendance of the auditor at such meeting at the co-operative's expense, and in such event the auditor shall attend the meeting. Member may require auditor's attendance at members' meeting

(14) At any meeting of members, the auditor, if present, shall answer inquiries directed to him concerning the bases upon which he formed the opinion stated in the report made under subsection 2. Auditors must answer inquiries

128.—(1) The directors shall lay before each annual meeting of members, Information to be laid before annual meeting

(a) a comparative financial statement relating separately to,

(i) the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the

co-operative has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, and

- (ii) the period covered by the financial year next preceding such latest completed financial year, if any,

made up of,

- (iii) a statement of profit and loss for each period,
- (iv) a statement of surplus for each period,
- (v) a statement of patronage returns allocated to members during the year,
- (vi) a statement of source and application of funds for each period, and
- (vii) a balance sheet as at the end of each period;
- (b) the report of the auditor to the members; and
- (c) such further information respecting the financial position of the co-operative as the articles or by-laws of the co-operative require.

Designation
of
statements

(2) It is not necessary to designate the statements referred to in subsection 1 as the statement of profit and loss, statement of surplus, statement of patronage returns, statement of source and application of funds and balance sheet.

Auditor's
report to
be read

(3) The report of the auditor to the members shall be read at the annual meeting and shall be open to inspection at the meeting by any member.

Statement
of profit
and loss

129.—(1) The statement of profit and loss to be laid before an annual meeting shall be drawn up so as to present fairly the results of the operations of the co-operative for the period covered by the statement and so as to distinguish severally at least,

- (a) sales or gross operating revenue;
- (b) the operating profit or loss before including or providing for other items of income or expense that are required to be shown separately;

- (c) income from investments in subsidiaries whose financial statements are not consolidated with those of the co-operative;
- (d) income from other investments;
- (e) non-recurring profits and losses of significant amount including profits or losses on the disposal of capital assets and other items of a special nature to the extent that they are not shown separately in the statement of earned surplus;
- (f) any provision for depreciation or for obsolescence or for depletion;
- (g) amounts written off for goodwill or amortization of any other intangible assets to the extent that they are not shown separately in the statement of earned surplus;
- (h) interest on indebtedness initially incurred for a term of more than one year, including amortization of debt discount or premium and expense; and
- (i) taxes on income imposed by any taxing authority,

and shall show the net profit or loss for the financial period.

(2) Notwithstanding subsection 1, items of the nature^{Idem} described in clauses *f* and *g* of subsection 1 may be shown by way of note to the statement of profit and loss.

130.—(1) The statement of surplus to be laid before an annual meeting shall be drawn up so as to present fairly the transactions reflected in the statement and shall show separately a statement of contributed surplus and a statement of earned surplus.^{Statement of surplus}

(2) The statement of contributed surplus shall be drawn up so as to include and distinguish at least the following items:^{Contributed surplus}

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period including,
 - i. the amount of surplus arising from the issue of shares or the reorganization of the co-operative's issued capital, including *inter alia*,

- a. the amount of premiums received on the issue of shares at a premium,
- b. the amount of surplus realized on the purchase of shares,
- ii. donations of cash or other property by members, and
- iii. the amount of membership fees.
- 3. The balance of such surplus at the end of the financial period.
- (3) The statement of earned surplus shall be drawn up so as to distinguish at least the following items:

Earned
surplus

- 1. The balance of such surplus at the end of the preceding financial period.
- 2. The additions to and deductions from such surplus during the financial period and without restricting the generality of the foregoing at least the following:
 - i. The amount of the net profit or loss for the financial period.
 - ii. The amount of dividends declared on each class of shares.
 - iii. The amount of patronage returns allocated to members.
 - iv. The amount transferred to or from reserves.
- 3. The balance of such surplus at the end of the financial period.

Treatment
of patronage
returns

131. Where a co-operative allocates patronage returns, the statement referred to in subclause v of clause a of subsection 1 of section 128 shall be drawn up to distinguish patronage returns according to services or products or groups of products acquired, marketed, handled, dealt in or sold or rendered by the customer or by the co-operative and such statement shall be so drawn as to present fairly the information shown therein for the period and show separately for members and non-members the amount of patronage returns allocated to each service, product or groups of products.

132. The statement of source and application of funds referred to in subclause vi of clause *b* of subsection 1 of section 128 shall be drawn up so as to present fairly the information shown therein for the period, and shall show separately at least,

(a) funds derived from,

- (i) current operations,
- (ii) sale of non-current assets, segregating investments, fixed assets and intangible assets,
- (iii) issue of debt obligations, including member loans, or other indebtedness maturing more than one year after issue,
- (iv) issue of shares,
- (v) membership fees; and

(b) funds applied to,

- (i) purchase of non-current assets, segregating investments, fixed assets and intangible assets,
- (ii) redemption or other retirement of debt obligations or repayment of other indebtedness maturing more than one year after issue,
- (iii) redemption or other retirement of shares,
- (iv) payment of dividends,
- (v) repayment of patronage loans,
- (vi) payment of cash patronage returns, and
- (vii) repayment of member loans.

133.—(1) The balance sheet to be laid before an annual meeting shall be drawn up so as to present fairly the financial position of the co-operative as at the date to which it is made up and so as to distinguish severally at least the following:

1. Cash.

2. Debts owing to the co-operative from its directors, officers or members, except debts of reasonable amount

arising in the ordinary course of its business that are not overdue having regard to its ordinary terms of credit.

3. Debts owing to the co-operative, whether on account of a loan or otherwise, from subsidiaries whose financial statements are not consolidated with those of the co-operative.
4. Other debts owing to the co-operative segregating those that arose otherwise than in the ordinary course of its business.
5. Inventory, stating the basis of valuation.
6. Shares, bonds, debentures and other investments owned by the co-operative, except those referred to in paragraph 7, stating their nature and the basis of their valuation and showing separately those that are marketable with a notation of their market value.
7. Securities of subsidiaries whose financial statements are not consolidated with those of the co-operative, stating the basis of valuation.
8. Lands, buildings and plant and equipment, stating the basis of valuation, whether cost or otherwise, and, if valued on the basis of an appraisal, the date of appraisal, the name of the appraiser, the basis of the appraisal value and, if such appraisal took place within five years preceding the date to which the balance sheet is made up, the disposition in the accounts of the co-operative of any amounts added to or deducted from such assets on appraisal and also the amount or amounts accumulated in respect of depreciation, obsolescence and depletion.
9. There shall be stated under separate headings, in so far as they are not written off,
 - i. expenditures on account of future business,
 - ii. any expense incurred in connection with any issue of shares,
 - iii. any expense incurred in connection with any issue of debt obligations, including any discount thereon, and
 - iv. any one or more of the following: goodwill, franchises, patents, copyrights, trade marks

and other intangible assets and the amount, if any, by which the value of any such assets has been written up within a period of five years preceding the date to which the balance sheet is made up.

10. Bank loans and overdrafts.
11. Debts owing by the co-operative, except those referred to in paragraphs 12 and 13, on loans from its directors, officers or members.
12. Debts owing by the co-operative on loans from members, called "member loans" referred to in section 49.
13. Debts owing by the co-operative to members on the compulsory loans of patronage returns referred to in subsection 4 of section 56.
14. Debts owing by the co-operative to subsidiaries whose financial statements are not consolidated with those of the co-operative, whether on account of a loan or otherwise.
15. Other debts owing by the co-operative, segregating those that arose otherwise than in the ordinary course of its business.
16. Liability for taxes, including the estimated liability for taxes in respect of the income of the period covered by the statement of profit and loss.
17. Dividends declared but not paid.
18. Deferred income.
19. Debt obligations issued by the co-operative, stating the interest rate, the maturity date, the amount outstanding and the existence of sinking fund, redemption requirements and conversion rights, if any.
20. The authorized capital, giving the number of each class of shares and a brief description of each such class, and indicating therein any class of shares that is redeemable and the redemption price thereof.
21. The issued capital, giving the number of shares of each class issued and outstanding and the amount

received therefor that is attributable to capital, and showing,

- i. the number of shares of each class issued since the date of the last preceding balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration, and
- ii. where any shares issued before this Act comes into force have not been fully paid,
 - a. the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and
 - b. the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid.

22. Contributed surplus.

23. Earned surplus.

24. Reserves, showing the amounts added thereto and the amounts deducted therefrom during the financial period.

25. The aggregate number of shares of the co-operative purchased and resold since the date of the last preceding balance sheet.

Notes

(2) Explanatory information or particulars of any item mentioned in subsection 1 may be shown by way of note to the balance sheet.

Notes to
financial
statement

134.—(1) There shall be stated by way of note to the financial statement particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of any of the statements with any of those for the preceding period, and the effect, if material, of any such change upon the profit or loss for the period.

Change in
accounting
practice

(2) For the purpose of subsection 1, a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a state-

ment with that for the preceding period, even though such change did not have a material effect upon the profit or loss for the period.

(3) Where applicable, the following matters shall be referred ^{Idem} to in the financial statement or by way of note thereto:

1. The basis of conversion of amounts from currencies other than the currency in which the financial statement is expressed.
2. Foreign currency restrictions that affect the assets of the co-operative.
3. Contractual obligations that will require abnormal expenditures in relation to the co-operative's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts.
4. Material contractual obligations in respect of long-term leases, including, in the year in which the transaction was effected, the principal details of any sale and lease transaction.
5. Contingent liabilities, stating their nature and, where practicable, the approximate amounts involved.
6. Any liability secured otherwise than by operation of law on any asset of the co-operative, stating the liability so secured.
7. Any default of the co-operative in principal, interest, sinking fund or redemption provisions with respect to any issue of its debt obligations or credit agreements.
8. The gross amount of arrears of dividends on any class of shares and the date to which such dividends were last paid.
9. Where a co-operative has contracted to issue shares or has given an option to purchase shares, the class and number of shares affected, the price and the date for issue of the shares or exercise of the option.
10. Where a co-operative has contracted to purchase or resell common shares, the number of shares affected and price and date for the purchase or resale.

11. The aggregate direct remuneration paid or payable by the co-operative and its subsidiaries whose financial statements are consolidated with those of the co-operative to the directors and the senior officers and, as a separate amount, the aggregate direct remuneration paid or payable to such directors and senior officers by the subsidiaries of the co-operative whose financial statements are not consolidated with those of the co-operative.
12. In the case of a co-operative with subsidiaries, the aggregate of any shares in, and the aggregate of any debt obligations of, that co-operative held by a subsidiary corporation whose financial statements are not consolidated with those of the co-operative.
13. The amount of any loans by the co-operative, or by a subsidiary corporation, otherwise than in the ordinary course of business, during the co-operative's financial period, to the directors or officers of the co-operative.
14. Any restriction by the articles or by-laws of the co-operative or by contract on the payment of dividends that is significant in the light of the co-operative's financial position.
15. Any event or transaction, other than one in the normal course of business operations, between the date to which the financial statement is made up and the date of the auditor's report thereon that materially affects the financial statement.
16. The amount of any obligation for pension benefits arising from service before the date of the balance sheet, whether or not such obligation has been provided for in the accounts of the co-operative, the manner in which the co-operative proposes to satisfy such obligation and the basis on which it has charged or proposes to charge the related costs against operations.
17. Brief particulars of any action to which the co-operative is a party commenced under section 68 during the period.
18. In the case of a co-operative that transacts business with non-members,
 - (i) where the amount of business transacted with non-members exceeds 20 per cent, a statement setting out the percentage of such business, or

- (ii) where the amount of business transacted with non-members does not exceed 20 per cent, a statement to this effect.

(4) A note to a financial statement is a part of it.

Idem

(5) In this section, "senior officer" does not include each of the five highest paid employees of a co-operative.

Interpretation of of senior officer

135.—(1) A co-operative, in this section referred to as "the holding co-operative", may include in the financial statement to be submitted at an annual meeting the assets and liabilities and income and expense of any one or more of its subsidiaries, making due provision for minority interests, if any, and indicating in such financial statement that it is presented in consolidated form.

Consolidated financial statement

(2) Where the assets and liabilities and income and expense of any one or more subsidiaries of the holding co-operative are not so included in the financial statement of the holding co-operative,

Non-consolidated financial statement

(a) the financial statement of the holding co-operative shall include a statement setting forth,

- (i) the reason why the assets and liabilities and income and expense of such subsidiary or subsidiaries are not included in the financial statement of the holding co-operative,
- (ii) if there is only one such subsidiary, the amount of the holding co-operative's proportion of the profit or loss of the subsidiary for the financial period coinciding with or ending in the financial period of the holding co-operative, or, if there is more than one such subsidiary, the amount of the holding co-operative's proportion of the aggregate profits less losses, or losses less profits, of all the subsidiaries for the respective financial periods coinciding with or ending in the financial period of the holding co-operative,
- (iii) the amount included as income from such subsidiary or subsidiaries in the statement of profit and loss of the holding co-operative and the amount included therein as a provision for the loss or losses of the subsidiary or subsidiaries,

- (iv) if there is only one such subsidiary, the amount of the holding co-operative's proportion of the undistributed profits of the subsidiary earned since the acquisition of the shares of the subsidiary by the holding co-operative to the extent that such amount has not been taken into the accounts of the holding co-operative, or, if there is more than one such subsidiary, the amount of the holding co-operative's proportion of the aggregate undistributed profits of all the subsidiaries earned since the acquisition of their shares by the holding co-operative less its proportion of the losses, if any, suffered by any subsidiary since the acquisition of its shares to the extent that such amount has not been taken into the accounts of the holding co-operative,
 - (v) any qualifications contained in the report of the auditor of any such subsidiary on its financial statement for the financial period ending as aforesaid, and any note or reference contained in that financial statement to call attention to a matter that, apart from the note or reference, would properly have been referred to in such a qualification, in so far as the matter that is the subject of the qualification or note is not provided for by the co-operative's own financial statement and is material from the point of view of its members;
- (b) if for any reason the directors of the holding co-operative are unable to obtain such information as is necessary for the preparation of the statement that is to be included in the financial statement of the holding co-operative, the directors who sign the financial statement shall so report in writing and their report shall be included in the financial statement in lieu of the statement;
- (c) if, in the opinion of the auditor of the holding co-operative, adequate provision has not been made in the financial statement of the holding co-operative for the holding co-operative's proportion,
- (i) where there is only one such subsidiary, of the loss of the subsidiary suffered since acquisition of its shares by the holding co-operative, or

- (ii) where there is more than one such subsidiary, of the aggregate losses suffered by the subsidiaries since acquisition of their shares by the holding co-operative in excess of its proportion of the undistributed profits, if any, earned by any of the subsidiaries since such acquisition,

the auditor shall state in his report the additional amount that in his opinion is necessary to make full provision therefor.

(3) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding co-operative are included in the financial statement of the holding co-operative, true copies of the latest financial statement of the subsidiary or subsidiaries shall be kept on hand by the holding co-operative at its head office and shall be open to examination by the members of the holding co-operative on request during the normal business hours of the holding co-operative.

136. Notwithstanding sections 129 to 135, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance.

137. In a financial statement, the term “reserve” shall be used to describe only,

- (a) amounts appropriated from earned surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred;
- (b) amounts appropriated from earned surplus pursuant to the articles or by-laws of the co-operative for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred; and
- (c) amounts appropriated from earned surplus in accordance with the terms of a contract and that can be restored to the earned surplus when the conditions of the contract are fulfilled.

138.—(1) The directors of a co-operative may elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three

directors, of whom a majority shall not be officers or employees of the co-operative to hold office until the next annual meeting of the members.

Chairman (2) The members of the audit committee shall elect a chairman from among their number.

Review (3) The co-operative shall submit the financial statement to the audit committee for its review and the financial statement shall thereafter be submitted to the board of directors.

Hearing of auditor (4) The auditor has the right to appear before and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

Idem (5) Upon the request of the auditor, the chairman of the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or members.

Right of auditor to be heard (6) The auditor of a co-operative shall be entitled to attend and be heard at meetings of the board of directors of the co-operative on matters relating to his duties as auditor.

Approval by directors **139.**—(1) The financial statement shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign and the auditor's report, unless the co-operative is exempt under section 123, shall be attached to or accompany the financial statement.

Rights of auditor where no audit committee (2) The auditor of a co-operative that has not elected an audit committee for the year to which the financial statement relates, is entitled,

(a) to receive notice of and to attend the meeting of directors called to approve the financial statement under subsection 1; and

(b) to request a meeting of the board of directors of the co-operative to consider any matters the auditor believes should be brought to their attention, and upon his request, the president of the co-operative shall convene such a meeting.

Mailing of financial statement to members **140.** —(1) A co-operative shall, ten days or more before the date of the annual meeting of members, send by prepaid mail to each member at his latest address as shown

on the records of the co-operative a copy of the financial statement and, subject to section 123, a copy of the auditor's report.

(2) The directors of such co-operative shall send by prepaid mail to each such member a copy of any financial statement and auditor's report amended under subsections 4 and 5 of section 127. Idem

141.—(1) A co-operative shall file with the Minister its financial statements and, subject to section 123, a copy of its auditor's report that are required to be mailed by the co-operative to its members. Financial statements to be filed with Minister

(2) The financial statements and auditor's report where required, shall be sent to the Minister on the same date such statements are mailed or required to be mailed by the co-operative to its members, whichever is the earlier. Idem

MAINTENANCE OF CO-OPERATIVE STATUS

142.—(1) Upon the request of the Minister, every co-operative shall furnish to the Minister such information as he may require to enable him, Information to be furnished to Minister

- (a) to compile statistical records and information in such form as the Minister may require;
- (b) to facilitate the carrying on of research projects;
- (c) to establish that all persons to whom this Act applies are not in contravention of this Act; and
- (d) to establish that the business and affairs of the co-operative are being conducted on a co-operative basis.

(2) The Minister or any employee in the Ministry shall not disclose any information contained in a return made under subsection 1, except where that disclosure is necessary for the administration or enforcement of this Act or where the disclosure is required by a court for the purposes of an action, prosecution or other proceeding. Information not to be disclosed

143. Where the Minister is of the opinion that the business and affairs of the co-operative are not being conducted on a co-operative basis, he may, after giving the co-operative an opportunity to be heard, issue a certificate of amendment changing the co-operative into a corporation subject to the provisions of *The Business Corporations Act* and where necessary for the purpose, changing the co-operative into a corporation with share capital. Affairs not conducted on co-operative basis

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c. 53

Limit to
non-member
business

144.—(1) Where the Minister is of the opinion that a co-operative has for a period of three years or longer, conducted 50 per cent or more of its business with non-members of that co-operative he may after giving the co-operative an opportunity to be heard, order that a certificate of amendment be issued changing the co-operative into a corporation that is subject to the provisions of *The Business Corporations Act* and, where necessary for the purpose, changing the co-operative into a corporation with share capital.

R.S.O. 1970,
c. 53

Idem

(2) For the purposes of subsection 1, the amount of business conducted by a co-operative with a non-member means the value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative, on behalf of or for the non-members expressed as a percentage of the total value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative from, on behalf of, or for all customers during the year.

Idem

(3) For the purposes of computing the amount of business under subsection 2, there shall not be included in the amount of business conducted with non-members, the value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative from, on behalf of or for non-members who are required to conduct business with the co-operative by a marketing plan established under an Act of the Legislature or of the Parliament of Canada.

Members
not to
number
fewer
than five

145.—(1) If a co-operative exercises its corporate powers when its members are fewer in number than five for a period of more than six months after the number has been so reduced, each person who was a member of the co-operative during the time that it so exercised its corporate powers after such period of six months and is aware of the fact that it so exercised its corporate powers is severally liable for the payment of the whole of the debts of the co-operative contracted during such time and may be sued for the debts without the joinder in the action of the co-operative or of any other member.

Saving

(2) A member who has become aware that the co-operative is so exercising its corporate powers may serve a protest in writing on the co-operative and may by registered letter notify the Minister of such protest having been served and of the facts upon which it is based, and such member may thereby and not otherwise, from the date of his protest and notification, exonerate himself from liability.

Notice and
penalty

(3) If after notice from the Minister the co-operative refuses or neglects to bring the number of its members up to five or more, such refusal or neglect may be regarded by the

Minister as sufficient cause for the cancellation of the certificate of incorporation or any certificate issued by him under this Act.

INVESTIGATIONS

146.—(1) Upon application by a member of a co-operative, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the co-operative or the holders of its securities to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as to the court seems fit, appointing an inspector to investigate the affairs and management of the co-operative or any subsidiary of the co-operative, or both, and to audit the accounts and records of the co-operative or any affiliate thereof named in the order. Investigations and audits

(2) An order may be made under subsection 1 whether or not there has been disclosure to the members of the co-operative of information relating to any matter on the basis of which the order is made. Idem

(3) Every director, officer, agent, employee, banker and auditor of the co-operative or of any subsidiary of the co-operative named in the order and every other person shall produce for the examination of the inspector all accounts and records of or relating to the co-operative or subsidiary in their custody or control. Production of accounts and records

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the co-operative or subsidiary in relation to its affairs, management, accounts and records. Examination may be under oath

(5) The court may, on the application of the inspector, on such terms and conditions as it sees fit, order any person not mentioned in subsection 4 to attend and be examined under oath before the inspector on any matter relevant to the investigation or audit. Court order for examination

(6) Every director, officer, agent, employee, banker or auditor who refuses to produce any account or record referred to in subsection 3 and every person examined under subsection 4 or 5 who refuses to answer any question related to the affairs and management of the co-operative or any subsidiary is guilty of an offence under section 176, in addition to any other liability to which he is subject. Offences

(7) The inspector shall make a report to the court and shall forward a copy of the report to the co-operative and any Inspector's report

subsidiary of the co-operative named in the order and to the person who made the application under subsection 1.

Co-operative
may appoint
inspector
for same
purpose

147.—(1) A co-operative may, by resolution passed at an annual meeting of members or a general meeting of members called for that purpose, appoint an inspector to investigate its affairs and management.

Powers and
duties of
inspector

(2) The inspector appointed under subsection 1 has the same powers and shall perform the same duties as an inspector appointed under section 146 and he shall make his report in such manner and to such persons as the co-operative by resolution of the members directs.

Where
Minister
to appoint
inspector

148. (1) Notwithstanding anything contained in section 146 or 147, the Minister shall appoint in writing an inspector to investigate and report on the affairs and management of a co-operative or its subsidiaries if 10 per cent of the members of the co-operative request in writing such investigation and show circumstances suggesting that,

- (a) the business of the co-operative or any of its subsidiaries is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the co-operative or any of its subsidiaries are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner oppressive or unfairly prejudicial to or in disregard of the interests of a security holder;
- (c) the co-operative or any of its subsidiaries was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the co-operative or any of its subsidiaries have in connection therewith acted fraudulently or dishonestly.

Idem

(2) The Minister may on his own initiative appoint in writing an inspector to investigate and report on the affairs and management of a co-operative or its subsidiaries if it appears that there exist any of the circumstances mentioned in clause *a*, *b*, *c* or *d* of subsection 1.

Production
of accounts
and records

(3) Every person shall produce for the examination of the inspector all accounts and records in their custody or control which relate to the co-operative or any of its subsidiaries.

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the co-operative or any of its subsidiaries in relation to its affairs, management, accounts and records. Examination may be under oath

(5) Upon an application to the court by the inspector, the court may, on such terms and conditions as it sees fit, order any person not mentioned in subsection 4 to attend and be examined under oath before the inspector on any matter relevant to the investigation. Court order for examination

(6) Every director, officer, agent, employee, banker or auditor who refuses to produce any account or record referred to in subsection 3 and every person examined under subsection 4 or 5 who refuses to answer any question related to the affairs and management of the co-operative or any of its subsidiaries is guilty of an offence under section 176 in addition to any other liability to which he is subject. Offences

(7) The inspector shall deliver the report of his investigation to the Minister and the Minister may forward a copy of the report to the co-operative and any subsidiary of the co-operative investigated. Report to be made to Minister

149. Where it appears from the report of an inspector made under section 146, 147 or 148 that any of the circumstances set out in clause *a, b, c* or *d* of subsection 1 of section 148 exist, the Minister may, notwithstanding any other remedies available, Remedies

- (a) apply under clause *d* of section 217 of *The Business Corporations Act* to wind up the co-operative by order of the court; R.S.O. 1970, c. 53
- (b) cancel the certificate of incorporation for cause under section 166;
- (c) require, or apply to the court for an order under section 78 requiring, the directors of the co-operative to call a general meeting of members; or
- (d) refer the report of the inspector to the Attorney General.

150. A copy of the report of an inspector appointed under this Act authenticated by the registrar of the court or in the case of an investigation under section 147 or 148 by the inspector is admissible in any legal proceeding and is evidence of the opinion of the inspector in relation to any matter contained in the report. Report admissible in proceedings

REORGANIZATION

Amendment of Articles

Amendments **151.**—(1) A co-operative may, from time to time, amend its articles of incorporation to,

- (a) change its name;
- (b) extend, limit or otherwise vary its objects;
- (c) increase its authorized capital;
- (d) decrease its authorized capital by cancelling shares whether issued or unissued or by reducing the par value of issued or unissued shares;
- (e) increase or decrease the membership fee;
- (f) increase or decrease the minimum amount of member loans;
- (g) redivide its authorized capital into shares of lesser or greater par value;
- (h) redesignate any class of shares;
- (i) reclassify any shares into shares of a different class;
- (j) delete or vary any provision in its articles;
- (k) provide for any other matter or thing that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the co-operative;
- (l) convert it into a co-operative with or without share capital;
- (m) convert it into a corporation to which *The Business Corporations Act* applies.

R.S.O. 1970,
c. 53

Authoriza-
tion

(2) An amendment under subsection 1, except clauses *l* and *m*, shall be authorized by a special resolution.

Idem

(3) Subject to section 152, an amendment under clause *l* or *m* of subsection 1 shall be authorized by a resolution of the board of directors and confirmed by at least three-quarters of the votes cast at a general meeting of the members of the co-operative duly called for that purpose.

(4) If the amendment is to delete or vary a preference, right, condition, restriction, limitation or prohibition attaching to a class of preference shares or to create preference shares, ranking in any respect in priority to or on a parity with an existing class of preference shares, then, in addition to the confirmation required by subsection 2, the resolution is not effective until it has been confirmed,

Additional
authorization
for
variation of
rights of
preference
shares

- (a) by 100 per cent of the holders of the shares of such class or classes of shares in writing; or
- (b) in writing by at least 95 per cent of the holders of the shares of such class or classes of shares holding at least 95 per cent of the issued shares of such class or classes and after twenty-one days notice of the resolution and confirmation has been given by sending the notice to each of the holders of shares of such class or classes to his latest address as shown on the records of the co-operative and only if at the expiration of twenty-one days none of the holders of such class or classes has dissented in writing to the co-operative; or
- (c) if the articles so provide, by at least two-thirds of the votes cast at a meeting of the holders of such class or classes of shares duly called for that purpose or such greater proportion of the votes cast as the articles provide,

and by such additional authorization as the articles provide.

152.—(1) Notwithstanding subsection 3 of section 151, where a co-operative is no longer able to conduct its business and affairs on a co-operative basis by reason of the provisions of an Act of the Legislature or of the Parliament of Canada, the co-operative may apply to the Minister for a certificate of amendment converting the co-operative to a corporation to which *The Business Corporations Act* applies and, where necessary, for the purpose, changing the co-operative into a corporation with share capital.

Conversion
of co-
operative to
corporation

R.S.O. 1970,
c. 53

(2) An application under subsection 1 shall be authorized by special resolution.

Authoriza-
tion

153.—(1) For the purpose of bringing an amendment to the articles into effect, the co-operative shall deliver to the Minister, within six months after the resolution has become effective, articles of amendment in duplicate, executed under the seal of the co-operative and signed by two officers, or by

Articles of
amendment

one director and one officer, of the co-operative and verified by affidavit of one of the officers or directors signing the articles of amendment, setting out,

- (a) the name of the co-operative;
- (b) a certified copy of the resolution;
- (c) that the amendment has been duly authorized as required by subsections 2, 3 and 4 of section 151; and
- (d) the date of the confirmation of the resolution by the members.

Change
of name

(2) Where the articles of amendment are to change the name of the co-operative, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the co-operative is not insolvent.

Decrease
of capital

(3) Where the articles of amendment are to decrease the authorized capital, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the co-operative is not insolvent and that the decrease will not render the co-operative insolvent, and, if required by the Minister, by evidence that establishes to his satisfaction that no creditors object to the amendment.

Pro forma
balance
sheet

(4) Where the articles of amendment are to make any change in the authorized capital, the articles of amendment shall, if required by the Minister, be accompanied by a *pro forma* balance sheet after giving effect to the proposed change.

Certificate of
amendment

154.—(1) If the articles of amendment conform to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles of amendment the word “Filed” and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the co-operative or its agent a certificate of amendment to which he shall affix the other duplicate.

Effect of
certificate

(2) The amendment becomes effective upon the date set forth in the certificate of amendment and the articles of incorporation are amended accordingly.

Restatement of Articles

155.—(1) A co-operative may at any time restate its ^{Restatement of articles} articles of incorporation as theretofore amended.

(2) For the purposes of bringing the restated articles into ^{Filing of restatement} effect, the co-operative shall deliver to the Minister the restated articles in duplicate, executed under the seal of the co-operative and signed by two officers, or by one director and one officer, of the co-operative and verified by affidavit of one of the officers or directors signing the restated articles, setting out,

- (a) all the provisions that are then set out in the original articles of incorporation as theretofore amended; and
- (b) a statement that the restated articles correctly set out without change the corresponding provisions of the original articles as theretofore amended.

(3) If the restated articles of incorporation conform to law, ^{Certificate of restatement} the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the restated articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the co-operative or its agent a restated certificate of incorporation to which he shall affix the other duplicate.

(4) The restated articles of incorporation become effective ^{Effect of certificate} upon the date set forth in the restated certificate and supersede the original articles of incorporation and all amendments thereto.

(5) Where a certificate of restatement is issued to a co- ^{Where special Act ceases to apply} operative incorporated by special Act, the co-operative is continued as if it had been incorporated under this Act and the special Act ceases to apply to the co-operative.

Amalgamations and Continuations

156.—(1) Any two or more co-operatives may amalgamate ^{Amalgamation} and continue as one co-operative.

(2) The co-operatives proposing to amalgamate shall enter ^{Agreement} into an agreement for the amalgamation, prescribing its terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect, and, in particular the agreement shall set out, as may be applicable,

- (a) the name of the amalgamated co-operative;

- (b) the objects of the amalgamated co-operative;
- (c) the place in Ontario where the head office of the amalgamated co-operative is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district, and giving the street and number, if any;
- (d) the authorized capital of the amalgamated co-operative, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share;
- (e) where there are to be preference shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions applying to them or each class of them;
- (f) the restrictions, if any, to be placed on the transfer of member loans or of its shares or any class thereof of the amalgamated co-operative;
- (g) the authorized loan capital of the amalgamated co-operative;
- (h) the amount of membership fee and the classes of membership, if any, setting forth the designation of and the terms and conditions attaching to each class of membership in the amalgamated co-operative;
- (i) the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the amalgamated co-operative;
- (j) the time and manner of election of the subsequent directors of the amalgamated co-operative;
- (k) whether or not the by-laws of the amalgamated co-operative are to be those of one of the amalgamating co-operatives, and, if not, a copy of the proposed by-laws of the amalgamated co-operative;
- (l) the manner in which the issued shares of each of the amalgamating co-operatives are to be converted into issued shares of the amalgamated co-operative;
- (m) the manner of conversion of the loan and share capital, as the case may be, of the amalgamating

co-operatives into the loan and share capital, as the case may be, of the amalgamated co-operative;

- (n) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated co-operative;

(3) Where shares of one of the amalgamating co-operatives are held by or on behalf of another of the amalgamating co-operatives, the amalgamation agreement shall provide for the cancellation of such shares upon the amalgamation becoming effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated co-operative. Shares of amalgamating co-operative held by another

(4) The member or patronage loans, if any, of the amalgamating co-operatives shall represent liabilities of the amalgamated co-operative. Treatment of patronage loans

(5) An amalgamation agreement is not effective until approved by a special resolution of each of the amalgamating co-operatives. Approval of agreement

(6) Where the carrying out of the amalgamation agreement would result in the deletion or variation of a preference, right, condition, restriction, limitation or prohibition attaching to a class of issued preference shares of any of the amalgamating co-operatives or in the creation of preference shares of the amalgamated co-operative ranking in any respect in priority to, or on a parity with, any existing class of preference shares of any of the amalgamating co-operatives, the agreement is not effective until it is approved in the manner provided by subsection 4 of section 151 in addition to the approval required by subsection 4. Approval by preference shareholders

157.—(1) For the purpose of bringing an amalgamation into effect, the amalgamating co-operatives shall, within six months after the amalgamation agreement has become effective, deliver to the Minister articles of amalgamation in duplicate executed under the seal of each of the amalgamating co-operatives and signed by two officers, or by one director and one officer, of each of the amalgamating co-operatives and verified by affidavit of one of the officers or directors signing the articles of amalgamation for each amalgamating co-operative, setting out, Filing of articles of amalgamation

- (a) the names of each of the amalgamating co-operatives;

- (b) a certified copy of the amalgamation agreement;
- (c) that the agreement has been duly approved as required by section 156; and
- (d) the dates on which the amalgamation agreement was approved by the members of each of the amalgamating co-operatives.

Evidence of
solvency

(2) The articles of amalgamation shall be accompanied by evidence that establishes to the satisfaction of the Minister that each of the amalgamating co-operatives is not insolvent and, if required by the Minister, a *pro forma* balance sheet after giving effect to the proposed amalgamation.

Issuance of
certificate of
amalgama-
tion

(3) If the articles of amalgamation conform to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the amalgamated co-operative or its agent a certificate of amalgamation to which he shall affix the other duplicate.

Effect of
certificate

(4) Upon the date set forth in the certificate of amalgamation,

- (a) the amalgamation becomes effective and the amalgamating co-operatives are amalgamated and continue as one co-operative under the terms and conditions prescribed in the amalgamation agreement;
- (b) the amalgamated co-operative possesses all the property, rights, privileges and franchises and is subject to all liabilities, contracts, disabilities and debts of each of the amalgamating co-operatives;
- (c) the issued capital of the amalgamated co-operative is, subject to the decrease provided for in subsection 3 of section 156, equal to the aggregate of the issued capital of each of the amalgamating co-operatives immediately before the amalgamation becomes effective; and
- (d) the articles of incorporation of each of the amalgamating co-operatives are amended to the extent

necessary to give effect to the terms and conditions of the amalgamation agreement.

158.—(1) A corporation incorporated under the laws of any jurisdiction other than Ontario may, if it appears to the Minister to be thereunto authorized by the laws of the jurisdiction in which it was incorporated, apply to the Minister for a certificate continuing it as if it had been incorporated under this Act, and the Minister may issue the certificate of continuation on application supported by such material as appears satisfactory, and the certificate may be issued on such terms and subject to such limitations and conditions and contain such provisions as appear to the Minister to be fit and proper.

Certificate of continuation

(2) Upon the date set forth in a certificate of continuation issued under subsection 1, this Act applies to the corporation to the same extent as if it had been incorporated under this Act.

Effect of certificate

159.—(1) A co-operative may, if authorized by a special resolution, by the Minister and by the laws of any other jurisdiction, apply to the proper officer of that other jurisdiction for an instrument of continuation continuing the co-operative as if it had been incorporated under the laws of that other jurisdiction.

Transfer of Ontario co-operative

(2) This Act ceases to apply to the co-operative on and after the date on which the co-operative is continued under the laws of the other jurisdiction and the co-operative shall file with the Minister a copy of the instrument of continuation certified by the proper officer of the other jurisdiction authorized to certify such documents.

Notice

(3) This section applies only in respect of a jurisdiction that has legislation in force that permits corporations incorporated under its laws to apply for an instrument of continuation under the laws of Ontario.

Application

160. All rights of creditors against the property, rights and assets of a co-operative amalgamated under section 156 or continued under section 158 and all liens upon its property, rights and assets are unimpaired by such amalgamation or continuation, and all debts, contracts, liabilities and duties of the co-operative thenceforth attach to the amalgamated or continued co-operative and may be enforced against it.

Rights of creditors preserved

DISSOLUTION

161. Sections 201 to 246, except clause *a* of subsection 1 of section 231, of *The Business Corporations Act* apply, *mutatis mutandis*, to co-operatives, and for the purpose a reference

Winding up
R.S.O. 1970,
c. 53

therein to a corporation shall be deemed to be a reference to a co-operative and a reference therein to a shareholder shall be deemed to be a reference to a member.

Distribution
of property

162.—(1) On any distribution of the property of a co-operative, member loans and patronage returns that are lent to the co-operative rank after the ordinary debts.

Distribution
of property
upon
dissolution

(2) The articles of a co-operative may provide that, upon the dissolution of the co-operative and after the payment of all debts and liabilities, including any declared and unpaid dividends and the amount paid up on outstanding shares, if any, the remaining property of the co-operative or any part thereof may be distributed or disposed of,

- (a) equally among the members irrespective of the number of shares or amount of loans, if any, held or made by a member;
- (b) among the members at the time of dissolution on the basis of patronage returns accrued to such members during the five fiscal years immediately preceding the dissolution or after the date of incorporation; or
- (c) to charitable organizations.

Idem

(3) In the absence of any provisions in the articles or by-laws, upon the dissolution of the co-operative, the whole of its remaining property shall be distributed equally among the members irrespective of the number of shares or amount of loans, if any, held or made by a member.

Voluntary
dissolution

163. A co-operative may be dissolved upon the authorization of,

- (a) a majority of the votes cast at a general meeting of the members of the co-operative duly called for the purpose or by such other proportion of the votes cast as the articles provide, but such other proportion shall not be less than 50 per cent of all the members entitled to vote at the meeting;
- (b) the consent in writing of all the members entitled to vote at such meeting; or
- (c) all its incorporators or their personal representatives at any time within two years after the date set forth in its certificate of incorporation where the co-operative has not commenced business and has not issued any shares or received any membership fees or loans.

Articles of
dissolution
where
co-operative
active

164.—(1) For the purpose of bringing the dissolution authorized under clause *a* or *b* of section 163 into effect, the co-operative shall deliver to the Minister within one year

after the authorization, articles of dissolution in duplicate, executed under the seal of the co-operative and signed by two officers or by one director and one officer, of the co-operative and verified by affidavit of one of the officers or directors signing the articles of dissolution, setting out,

- (a) the name of the co-operative;
- (b) that its dissolution has been duly authorized under clause *a* or *b* of section 163;
- (c) that it has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection 3 or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;
- (d) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute among its members or that it has distributed its remaining property in accordance with section 162 or in accordance with subsection 4 where applicable;
- (e) that there are no proceedings pending in any court against it; and
- (f) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its principal place of business in Ontario or, if it does not have a place of business in Ontario, where it has its head office.

(2) For the purpose of bringing a dissolution authorized under clause *c* of section 163 into effect, the co-operative shall deliver to the Minister articles of dissolution in duplicate, signed by all its incorporators or their personal representatives and verified by affidavit of one of them setting out,

Articles of
dissolution
where co-
operative
never active

- (a) the name of the co-operative;
- (b) the date set forth in its certificate of incorporation;
- (c) that the co-operative has not commenced business;
- (d) that none of its shares has been issued;
- (e) that no membership fees or loans have been received;

- (f) that dissolution has been duly authorized under clause *c* of section 163;
- (g) that it has no debts, obligations or liabilities;
- (h) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute or that it has distributed its remaining property to the persons entitled thereto;
- (i) that there are no proceedings pending in any court against it; and
- (j) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office.

Where
creditor
unknown

(3) Where a co-operative authorizes its dissolution and a creditor is unknown or his whereabouts is unknown, the co-operative may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and such payment shall be deemed to be due provision for the debt for the purposes of clause *c* of subsection 1.

Where
member or
shareholder
unknown

(4) Where a co-operative authorizes its dissolution and a member is unknown or his whereabouts is unknown, it may, by agreement with the Public Trustee, deliver or convey his share of the property to the Public Trustee to be held in trust for him, and such delivery or conveyance shall be deemed to be a distribution to that member for the purposes of the dissolution.

Power to
consent

(5) If the property delivered or conveyed to the Public Trustee under subsection 4 is in a form other than cash, the Public Trustee may at any time, and within ten years after such delivery or conveyance shall, convert it into cash.

Payment
to person
entitled

(6) If the amount paid under subsection 3 or the property delivered or conveyed under subsection 4 or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled thereto within ten years after it was so delivered, conveyed or paid, it shall be delivered, conveyed or paid to him, but, if not so claimed, it vests in the Public Trustee for the use of Ontario, and, if the person beneficially entitled thereto at any time thereafter establishes his right thereto to the satisfaction of the Lieutenant Governor in Council, an amount equal to the amount so vested in the Public Trustee shall be paid to him.

165.—(1) If the articles of dissolution conform to law, the Minister shall, when all prescribed fees have been paid and all taxes payable by the co-operative to the Treasurer of Ontario have been paid, ^{Certificate of dissolution}

- (a) endorse on each duplicate of the articles of dissolution the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the co-operative or its agent a certificate of dissolution to which he shall affix the other duplicate.

(2) The dissolution becomes effective and the co-operative is dissolved upon the date set forth in the certificate of dissolution. ^{Effect of certificate}

166. Where sufficient cause is shown to the Minister, he may, after he has given the co-operative an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any certificate issued by him under this Act, and, ^{Cancellation of certificate, etc., by Minister}

- (a) in the case of the cancellation of a certificate of incorporation, the co-operative is dissolved on the date fixed in the order;
- (b) in the case of the cancellation of any other certificate, the matter that became effective upon the issuance of the certificate ceases to be in effect from the date fixed in the order.

167.—(1) Where a co-operative is in default in filing an annual return or financial statement for a period of two years, the Minister may give notice, by registered mail to the co-operative or by publication once in *The Ontario Gazette*, that an order dissolving the co-operative will be issued unless the co-operative files the annual return or financial statement within one year after the giving of the notice. ^{Notice of dissolution}

(2) Upon default in compliance with the notice given under subsection 1, the Minister may by order cancel the certificate of incorporation and, subject to subsection 3, the co-operative is dissolved on the date fixed in the order. ^{Dissolution for default}

(3) Where a co-operative is dissolved under subsection 2, the Minister, on the application of any interested person immediately before the dissolution, made within two years after the date of dissolution, may in his discretion by order, on such ^{Revival}

terms and conditions as he sees fit to impose, revive the co-operative, and thereupon the co-operative, subject to the terms and conditions of the order and to any rights acquired by any person after its dissolution, is restored to its legal position, including all its property, rights, privileges and franchises, and is subject to all its liabilities, contracts, disabilities and debts, as at the date of its dissolution, in the same manner and to the same extent as if it had not been dissolved.

Suits after
dissolution

168.—(1) Notwithstanding the dissolution of a co-operative under section 165, 166 or 167,

- (a) any action, suit or other proceeding commenced by or against the co-operative before its dissolution may be proceeded with as if the co-operative had not been dissolved;
- (b) any action, suit or other proceeding may be brought against the co-operative within two years after its dissolution as if the co-operative had not been dissolved; and
- (c) any property that would have been available to satisfy any judgment, order or other decision if the co-operative had not been dissolved remains available for such purpose.

Service after
dissolution

(2) For the purposes of this section, the service of any process on a co-operative after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Ministry as being a director or officer of the co-operative before the dissolution.

Liability of
members to
creditors

169.—(1) Notwithstanding the dissolution of a co-operative, each of the members among whom its property has been distributed remains liable to its creditors to the extent of the amount received by him upon the distribution, and an action in a court of competent jurisdiction to enforce such liability may be brought against him within two years from the date of the dissolution and not thereafter.

Action
against one
member as
representing
class

(2) Where there are numerous members, the court referred to in subsection 1 may permit an action to be brought against one or more members as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such members as are found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined.

170. Subject to section 168, any real or personal property of a co-operative that has not been disposed of at the date of its dissolution is forfeit to the Crown. Forfeiture of undischarged property

171. At the same time as a co-operative is required to file its financial statements with the Minister under subsection 2 of section 141, the co-operative shall also file an annual return in such form as the regulations prescribe. Annual return

GENERAL

172.—(1) Subject to the articles or by-laws of a co-operative, Notice to directors and members

(a) a notice or other document required to be given or sent by a co-operative to a member or director may be delivered personally or sent by prepaid mail addressed to the member or director at his latest address as shown on the records of the co-operative; and

(b) a notice or other document sent by mail by a co-operative to a member or director shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail.

(2) Where notices or other documents required by this Act, the articles or by-laws to be given or sent by a co-operative to a member have been mailed to the member at his latest address as shown on the records of the co-operative and where, on three consecutive occasions, notices or other documents have been returned by the Post Office to the co-operative, the co-operative is not required to mail to the member any further notices or other documents until such time as the co-operative receives written notice from the member requesting that notices and other documents be sent to the member at a specified address. Undelivered mail

(3) Except where otherwise provided in this Act, a notice or document required to be given or sent to a co-operative may be sent to the co-operative by prepaid mail at its head office as shown on the records of the Ministry and shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. Notice to co-operative

(4) Where a notice is required by this Act to be given to any person, the giving of the notice may be waived or the time for the notice may be waived or abridged with the consent in writing of such person, whether before or after the time prescribed. Waiver of notice and abridgement of time

Offence,
false
statement

173.—(1) Every person who makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omission of which makes the statement false or misleading is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person is guilty of an offence under subsection 1 if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

Offence,
failure
to file

174.—(1) Every person who fails to file with the Minister any document required by this Act to be filed with him is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or, if such person is a corporation, to a fine of not more than \$20,000.

Idem

(2) Where a corporation is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000.

Consent

175. No proceeding under section 173 or 174 shall be commenced except with the consent or under the direction of the Minister.

Offence,
general

176.—(1) Except where otherwise provided, every person who commits an act contrary to or fails or neglects to comply with any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or, if such person is a corporation, to a fine of not more than \$10,000.

Idem

(2) Where a corporation is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in the offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000.

Limitation

177.—(1) No proceeding under section 173 or 174 or under section 176 for a contravention of section 118 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Minister as certified by him.

(2) Subject to subsection 1, no proceeding for an offence ^{Idem} under this Act or the regulations shall be commenced more than one year after the time when the subject-matter of the offence arose.

178. Where a co-operative or a director, officer or employee ^{Order for compliance} of a co-operative does not comply with any provision of this Act, the articles or the by-laws of the co-operative, the Minister or a member or a creditor of the co-operative, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, may apply to the court for an order directing the co-operative, director, officer or employee, as the case may be, to comply with such provision, and upon such an application the court may make such order or such other order as the court thinks fit.

179.—(1) The Minister may require any fact relevant to ^{Proof by affidavit} the performance of his duties under this Act or the regulations to be verified by affidavit or otherwise.

(2) For the purpose of holding a hearing under this Act, ^{Oaths at hearings} the Minister may administer oaths to witnesses and require them to give evidence under oath.

180. The Minister shall cause notice to be published forth- ^{Publication of notices in The Ontario Gazette} with in *The Ontario Gazette*,

(a) of the issue of every certificate under section 6, 9, 154, 155, 157, 158 or 165;

(b) of the issue of every order under section 118, 166 or 167;

(c) of the filing of a certified copy of an order under subsection 6 of section 215 or subsection 2 of section 228 of *The Business Corporations Act*;

R.S.O. 1970,
c. 53

(d) of the filing of a notice by a liquidator under subsection 2 of section 215 of *The Business Corporations Act*.

181.—(1) Upon payment of the prescribed fee, any person ^{Searches} is entitled to examine any document filed with or issued by the Minister under this Act, and to make extracts therefrom.

(2) Upon payment of the prescribed fee, the Minister shall ^{Certifications by Minister} furnish any person with a certificate as to whether or not a document has been filed with or issued by him under this Act or any predecessor thereof or with a certified copy of any such document.

Execution of
certificates
of Minister

182.—(1) Where this Act requires or authorizes the Minister to issue a certificate or certify any fact, the certificate shall be issued under the seal of the Minister and shall be signed by him or by such officer of the Ministry as is designated by the regulations.

Certificates
as evidence

(2) Any certificate purporting to be under the seal of the Minister and signed by a person authorized by or under subsection 1, or any certified copy, is receivable in evidence in any action, prosecution or other proceeding as *prima facie* proof of the facts so certified without proof of the seal or of the signature or the official position of the person appearing to have signed the certificate.

Notice of
refusal
to file

183.—(1) Where the Minister refuses to file any articles or any other document required by this Act to be filed by him before it becomes effective, he shall give written notice to the person who delivered the articles or other document of his refusal, specifying the reasons therefor.

Failure to
act deemed
refusal

(2) Where, within six months after the delivery to the Minister of articles or other document referred to in subsection 1, the Minister has not filed or refused to file such articles or other document, he shall be deemed for the purposes of section 184 to have refused to file it.

Appeal from
Minister

184.—(1) Any person who feels aggrieved by a decision of the Minister to,

- (a) refuse to file articles or any other document or to issue any certificate required by this Act to be filed or issued;
- (b) issue or refuse to issue a certificate of amendment under subsection 2, 3 or 4 of section 9;
- (c) issue a certificate of amendment under section 143, 144 or 152;
- (d) issue an order under section 166,

may appeal the decision to the Supreme Court.

Certificate
of Minister

(2) The Minister shall certify to the Registrar of the Supreme Court,

- (a) the decision of the Minister, together with a statement of the reasons therefor;
- (b) the record of any hearing; and

- (c) all written submissions to the Minister or other material that is relevant to the appeal.

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. Representation

(4) Where an appeal is taken under this section, the Supreme Court may by its order direct the Minister to make such decision or to do such other act as the Minister is authorized and empowered to do under this Act and as the court thinks proper, having regard to the material and submissions before it and to this Act, and the Minister shall make such decision or do such act accordingly. Order of court

(5) Notwithstanding an order of the Supreme Court, the Minister has power to make any further decision upon new material or where there is a material change in the circumstances, and every such decision is subject to this section. Minister may make further decision

185. An appeal lies to the Court of Appeal from any order made by the court under this Act. Appeal from court

186. The Lieutenant Governor in Council may make regulations respecting any matter that he considers necessary relating to the incorporation, conduct and dissolution of co-operatives including, without limiting the generality of the foregoing, regulations, Regulations

(a) respecting names, objects, authorized capital, the form and contents of offering statements, membership, the designations, preferences, rights, conditions, restrictions, limitations, or prohibitions attaching to shares or classes of shares or any other matter pertaining to articles or the filing thereof;

(b) requiring the payment of fees for any matter that the Minister is required or authorized to do under this Act, and prescribing the amounts thereof;

(c) prescribing any matter required by this Act to be prescribed by the regulations;

(d) designating officers of the Ministry for the purposes of paragraph 4 of subsection 1 of section 1 and section 182.

187.—(1) For three years after this Act comes into force any provision in the letters patent, supplementary letters patent or by-laws and any special resolution of the co-operative that was valid immediately before this Act comes Continuance of letters patent, etc.

into force, except a provision that contravenes section 110, continues to be valid and in effect but any additions or amendments to or deletions from any provision in the letters patent, supplementary letters patent or by-laws of a co-operative shall be made in accordance with this Act.

Continuance
re shares
not fully
paid
R.S.O. 1970,
c.89.

(2) For three years after this Act comes into force the provisions of *The Corporations Act* relating to the liability of the holder of shares that are not fully paid and to the enforcement of such liability continue to apply in respect of shares that are not fully paid.

Commence-
ment

188. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

189. This Act may be cited as *The Co-operative Corporations Act, 1973*.

The Co-operative Corporations Act, 1973

1st Reading

October 2nd, 1973

2nd Reading

October 16th, 1973

3rd Reading

THE HON. J. T. CLEMENT
Minister of Consumer and
Commercial Relations

(Reprinted as amended by the
Committee of the Whole House)

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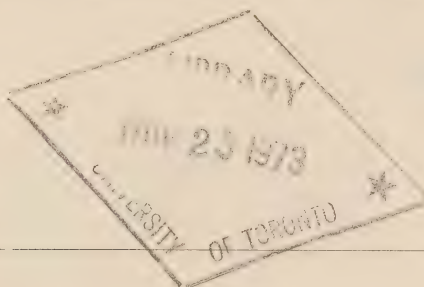
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3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

The Co-operative Corporations Act, 1973



THE HON. J. T. CLEMENT
Minister of Consumer and Commercial Relations

TORONTO

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1973

The Co-operative Corporations Act, 1973

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

1. “articles of incorporation” or “articles” means the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which a co-operative is incorporated, and includes any amendments thereto;
2. “authorized capital” means the authorized capital as determined under section 25;
3. “certificate of incorporation” includes letters patent, a special Act or any other instrument by which a co-operative is incorporated;
4. “certified copy” means,
 - i. in relation to a document of a co-operative, a copy of the document certified to be a true copy under the seal of the co-operative and signed by an officer thereof,
 - ii. in relation to a document issued by a court, a copy of the document certified to be a true copy under the seal of the court and signed by the registrar or clerk thereof,
 - iii. in relation to a document in the custody of the Ministry, a copy of the document certified to be a true copy under the seal of the

Minister and signed by the Minister or by such officer of the Ministry as is designated by the regulations;

5. "co-operative" means a corporation carrying on an enterprise on a co-operative basis and to which this Act applies;
6. "co-operative basis" means organized, operated and administered upon the following principles and methods,
 - i. each member or delegate has only one vote,
 - ii. no member or delegate may vote by proxy,
 - iii. interest on loan capital and dividends on share capital are limited to a percentage fixed by this Act or the articles of incorporation, and
 - iv. the enterprise of the corporation is operated as nearly as possible at cost after providing for reasonable reserves and the payment or crediting of interest on loan capital or dividends on share capital; and any surplus funds arising from the business of the organization, after providing for such reasonable reserves and interest or dividends, unless used to maintain or improve services of the organization for its members or donated for community welfare or the propagation of co-operative principles, are distributed in whole or in part among the members in proportion to the volume of business they have done with or through the organization;
7. "corporation" means a corporation with or without share capital whether or not it is a co-operative to which this Act applies;
8. "court" means the Supreme Court of Ontario presided over by one of those judges of the High Court who are designated by the Chief Justice of the High Court for the purpose of hearing applications under this Act;
9. "debt obligation" means a bond, debenture, note or other similar obligation of a corporation, whether secured or unsecured;

10. "direct charge co-operative" means a co-operative that deals with its members and prospective members only in products or services on a cost basis and that directly charges its members a fee to cover the operating expenses of the co-operative;
11. "financial statement" means a financial statement referred to in section 128;
12. "issued capital" means the issued capital as determined under section 29;
13. "member" means a person who is a member of a co-operative pursuant to the provisions of this Act or the articles and by-laws of the co-operative governing membership;
14. "Minister" means the Minister of Consumer and Commercial Relations or such other member of the Executive Council to whom the administration of this Act may be assigned;
15. "Ministry" means the Ministry of the Minister;
16. "officer" means the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager, or any other person designated an officer by by-law or by resolution of the directors or any other individual who performs functions for the co-operative similar to those normally performed by an individual occupying any such office;
17. "personal representative", where used with reference to the holding of shares or loans or the exercise of a member's rights in that capacity, means in the capacity of an executor, administrator, guardian, tutor, trustee, receiver or liquidator of the member, shareholder or lender or the committee of or curator to the member, shareholder or lender who is a mentally incompetent person;
18. "prescribed" means prescribed by the regulations;
19. "regulations" means the regulations made under this Act;
20. "related person", where used to indicate a relationship with any person, means,

- i. any spouse, son or daughter of that person, or
 - ii. any relative of such person or of his spouse, other than a relative referred to in subparagraph i, who has the same home as such person;
21. "resident Canadian" means a Canadian citizen or person lawfully admitted to Canada for permanent residence, who is ordinarily resident in Canada;
22. "security" means any share of any class of shares or any debt obligation of a corporation;
23. "senior officer" means,
- i. the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a co-operative or any other individual who performs functions for the co-operative similar to those normally performed by an individual occupying any such office, and
 - ii. each of the five highest paid employees of a co-operative, including any individual referred to in subparagraph i;
24. "special resolution" means a resolution that is not effective until it is,
- i. passed by the directors of a co-operative, and
 - ii. confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the members of the co-operative duly called for that purpose, or such greater proportion of the votes cast as the articles provide;
25. "term loan" means a loan having a fixed date of maturity and includes member and patronage loans having a fixed date of maturity.

Inter-
pretation:
subsidiary

(2) For the purposes of this Act, a corporation shall be deemed to be a subsidiary of a co-operative if, but only if, it is controlled by that co-operative.

Holding
co-operative

(3) For the purposes of this Act, a co-operative shall be deemed to be a corporation's holding co-operative if, but only if, that corporation is its subsidiary.

Control

(4) For the purposes of this Act, a subsidiary shall be deemed to be controlled by one or more other corporations if, but only if,

- (a) shares of the subsidiary carrying more than 50 per cent of the votes for the election of directors are held, other than by way of security only, by or for the benefit of such one or more other corporations; and
- (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the subsidiary.

(5) For the purposes of this Act, a co-operative is insolvent^{Insolvency} if its liabilities exceed the realizable value of its assets or if the co-operative is unable to pay its debts as they become due.

(6) In determining the number of members of a co-operative,^{Number of members} for the purposes of this Act, two or more persons holding the same share or shares jointly shall be counted as one member.

2. The Minister may delegate in writing any of his duties<sup>Adminis-
tration</sup> or powers under this Act to any public servant in the Ministry.

3. This Act, except where it is otherwise expressly pro-^{Application}vided, applies,

- (a) to every corporation incorporated as a co-operative by or under a general or special Act of the Parliament of the former Province of Upper Canada;
- (b) to every corporation incorporated as a co-operative by or under a general or special Act of the Parliament of the former Province of Canada that has its head office and carries on business in Ontario and that was incorporated with objects to which the authority of the Legislature extends; and
- (c) to every corporation incorporated as a co-operative by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation to which *The R.S.O. 1970, c. 96*
Credit Unions Act applies.

INCORPORATION

4.—(1) A co-operative may be incorporated under this^{Incorporation} Act for any lawful objects to which the authority of the Legislature extends, except those of a corporation the incorporation of which is provided for in any other Act.

(2) Where the practice of a profession is governed by an^{Professions} Act, a co-operative may be incorporated to practise the profession only if such Act expressly permits the practice of the profession by a corporation and subject to the provisions of such Act.

Articles of
incorporation

5.—(1) Five or more persons, being corporations or natural persons who are of the age of eighteen years or more, may incorporate a co-operative with or without share capital by signing and delivering to the Minister in duplicate articles of incorporation.

Contents of
articles

(2) Subject to subsection 3, articles of incorporation shall set out the following particulars:

1. The name of the co-operative to be incorporated.
2. The objects for which the co-operative is to be incorporated.
3. The place in Ontario where the head office of the co-operative is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district and the address giving the street and number, if any.
4. The number of directors of the co-operative and the names in full and the residence addresses, giving the street and number, if any, of each person who is to be a first director of the co-operative.
5. The name in full, and the residence address, giving the street and number, if any, of each of the incorporators.

Idem

(3) In addition to the particulars required to be set out in subsection 2, articles of incorporation shall state,

(a) where there is to be share capital,

- (i) the authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares of each class and the par value of each share,
- (ii) where there are to be preference shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to them or each class of them,
- (iii) the restrictions to be placed on the transfer of its shares or any class thereof, and
- (iv) the class and number of shares to be taken by each incorporator and the amount to be paid therefor;

(b) where there is to be no share capital,

- (i) the amount of the membership fee,
- (ii) the authorized loan capital,
- (iii) the restrictions to be placed on the transfer of member loans,
- (iv) the classes of membership, if any, setting forth the designation of and the terms and conditions attaching to each class of membership, and
- (v) the amount of a minimum member loan, if any,

and any other matter required by this Act or the regulations to be set out in the articles.

(4) The articles may set out any provision that is authorized ^{Idem} by this Act to be set out in the articles or that could be the subject of a by-law of the co-operative.

(5) Where the articles name as a first director a person ^{Consent of first director} who is not an incorporator, the articles shall have attached thereto his written and signed consent to act as a first director.

(6) The signature of each incorporator and of each first ^{Affidavits} director and the fact that each incorporator who is a natural person and each first director is of the age of eighteen years or more shall be verified by affidavit.

6.—(1) If the articles conform to law and the approval of ^{Certificate of incorporation} any person or body required by statute to approve the incorporation has been given, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the incorporators or their agent a certificate of incorporation to which he shall affix the other duplicate.

(2) A co-operative comes into existence upon the date set ^{Idem} forth in its certificate of incorporation.

Idem (3) A certificate of incorporation is conclusive proof that all conditions precedent required to be performed by the incorporators have been complied with and that the co-operative has been incorporated under this Act, except in a proceeding under section 166 to cancel the certificate for cause.

NAME

Use of co-operative 7.—(1) The corporate name of a co-operative shall include the word "co-operative" as part thereof.

Idem (2) Where a co-operative or any director, officer, employee or member uses the name of the co-operative, the word "co-operative" may be abbreviated to "co-op".

Idem (3) No corporation, association, partnership or individual not being a co-operative to which this Act applies shall use in Ontario a name that includes the word "co-operative" or any abbreviation or derivation thereof whether or not the word, abbreviation or derivation is used in or in connection with the name.

Idem (4) Subsection 3 does not apply to a corporation incorporated by or under the authority of the Parliament of Canada, to a corporation granted an extra-provincial licence, to a corporation incorporated under the laws of Ontario before the 12th day of April, 1917, or to a corporation to which *The Credit Unions Act* applies.

R.S.O. 1970,
c. 96 Use of "Incorporated", "Corporation" (5) Subject to subsection 6, the name of a co-operative shall have the word "Incorporated" or "Corporation" or its corresponding abbreviation "Inc." or "Corp." as the last word thereof.

Use of "Limited" (6) Where a co-operative has share capital, the name of the co-operative may have the word "Limited" or its abbreviation "Ltd." as the last word thereof.

Use of name 8. Notwithstanding section 7, a co-operative may use its name in such form and in such language as the articles provide and as the Minister approves.

Co-operative name 9.—(1) The name of a co-operative shall not,

- (a) be the same as or similar to the name of a known corporation, association, partnership or individual whether in existence or not if its use would be likely to deceive, except where the corporation, association, partnership or individual signifies its or his consent in writing to the use of the name in whole or in part, and, if required by the Minister,

- (i) in the case of a corporation, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles or amendment by which the name is acquired, or
- (ii) in the case of an association, partnership or individual, undertakes to cease to carry on its or his business or activities, or change its or his name to a dissimilar name, within six months after the filing of the articles or amendment by which the name is acquired;
- (b) suggest or imply a connection with the Crown or the Government of Canada or the government of a municipality or any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government or municipality without the consent in writing of the appropriate authority;
- (c) suggest or imply a connection with a political party or a leader of a political party;
- (d) contain any word or phrase that indicates or implies that it is incorporated for any object other than one or more of the objects set out in its articles;
- (e) contain any word or phrase or any abbreviation or derivation thereof, the use of which is prohibited or restricted under any other Act unless in the latter case the restrictions are complied with; or
- (f) in the opinion of the Minister, be objectionable on any public grounds.

(2) If a co-operative through inadvertence or otherwise has acquired a name contrary to subsection 1, the Minister may, after he has given the co-operative an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly.

(3) Where an undertaking referred to in clause *a* of subsection 1 is given by a co-operative and the undertaking is not carried out within the time specified, the Minister may, after giving the co-operative an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly.

Idem (4) Where an undertaking referred to in clause *a* of subsection 1 is given by a corporation to which this Act does not apply or by an association, partnership or individual and the undertaking is not carried out within the time specified, the Minister may, after giving the co-operative that acquired the name by virtue of such undertaking an opportunity to be heard, issue a certificate of amendment to the articles changing the name of the co-operative to the name specified in the certificate, and, upon the issuance of the certificate, the articles are amended accordingly.

Change not to affect rights, etc. **10.** A change in the name of a co-operative does not affect its rights or obligations.

Unauthorized use of "Limited", etc. **11.** Where a co-operative carries on business or identifies itself to the public in a name or style other than as provided in the articles, such name or style shall not include the word "Limited", "Incorporated" or "Corporation" or any abbreviation thereof.

Reservation of name **12.—(1)** Any person may, on application in writing and on the payment of the prescribed fee, reserve a corporate name for the use and benefit of the applicant or his nominee for a period of ninety days or such lesser period as he specifies, if the name is at the time not contrary to section 9.

Idem (2) During the period for which the name has been reserved, no corporation shall acquire the name or a similar name without the consent in writing of the person for whose use and benefit the name has been reserved.

SEAL AND HEAD OFFICE

Corporate seal **13.—(1)** A co-operative shall have a seal which shall be adopted and may be changed by resolution of the directors.

Idem (2) The name of the co-operative shall appear in legible characters on the seal.

Head office **14.—(1)** Subject to subsection 2, a co-operative shall at all times have its head office at the place in Ontario where the articles provide that the head office is to be located.

Change of head office (2) A co-operative may by by-law change the municipality or geographic township in which its head office is located to another place in Ontario.

Where municipality annexed or amalgamated (3) Where the location of the head office of a co-operative is changed by reason only of the annexation or amalgamation of the place in which the head office is located

to or with another municipality, such change does not constitute and has never constituted a change within the meaning of subsection 2.

(4) The co-operative shall, within ten days after a by-law^{Filing of by-law} passed under subsection 2 has been confirmed by the members, file a certified copy of the by-law with the Minister.

(5) A co-operative may by resolution of the directors change^{Change of street address} the location of its head office within a municipality or geographic township and shall, within ten days after the passing of the resolution, file with the Minister notice of the change giving the address including the street and number, if any, of the new location.

(6) Failure to comply with subsection 4 or 5 does not^{Validity} affect the validity of the by-law or resolution.

POWERS

General

15.—(1) Every co-operative has power,

^{Corporate characteristics}

- (a) to have perpetual succession;
- (b) to contract and sue and be sued in its corporate name; and
- (c) to carry on business in or identify itself to the public by a name or style other than its corporate name.

(2) A co-operative has power as incidental and ancillary^{Incidental powers} to the objects set out in its articles,

- 1. to carry on any other business capable of being conveniently carried on in connection with its business or likely to enhance the value of any of its property or rights;
- 2. to acquire or undertake the whole or any part of the business, property and liabilities of any person carrying on any business that the co-operative is authorized to carry on;
- 3. to apply for, register, purchase, lease, acquire, hold, use, control, license, sell, assign or dispose of patents, patent rights, copyrights, trade marks, formulae, licences, inventions, processes, distinctive marks and similar rights;

4. to enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise with any person or corporation carrying on or engaged in or about to carry on or engage in any business or transaction that the co-operative is authorized to carry on or engage in or any business or transaction capable of being conducted so as to benefit the co-operative;
5. where authorized to do so by resolution of the board of directors and where it is necessary to enable the co-operative to improve its services to its members, to take or otherwise acquire and hold securities in any other corporation having objects altogether or in part similar to those of the co-operative or carrying on any business capable of being conducted so as to benefit the co-operative;
6. to lend money to any other corporation or any firm or person having dealings with the co-operative or with whom the co-operative proposes to have dealings or to any other corporation any of whose shares are held by the co-operative;
7. to apply for, secure or acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege, that any government or authority or any corporation or other public body may be empowered to grant, and to pay for, aid in and contribute towards carrying it into effect and to assume any liabilities or obligations incidental thereto;
8. to establish and support or aid in the establishment and support of associations, institutions, funds or trusts for the benefit of employees or former employees of the co-operative or its predecessors, or the dependants or connections of such employees or former employees, and grant pensions and allowances, and make payments towards insurance or for any object similar to those set forth in this paragraph, and to subscribe or guarantee money for charitable, benevolent, educational or religious objects or for any exhibition or for any public, general or useful objects;
9. to promote any corporation for the purpose of acquiring or taking over any of the property and liabilities of the co-operative or for any other purpose that may benefit the co-operative;

10. to purchase, lease, take in exchange, hire or otherwise acquire any personal property and any rights or privileges that the co-operative considers necessary or convenient for the purposes of its business;
11. to construct, maintain and alter any buildings or works necessary or convenient for its objects;
12. to acquire by purchase, lease or otherwise and hold any land or interest therein necessary for its actual use and occupation or for carrying on its undertaking, and, when no longer necessary therefor, to sell, alienate or convey it;
13. to take, hold and alienate real and personal property that has in good faith been mortgaged to the co-operative by way of security for, or conveyed to it in satisfaction of, debts previously contracted in the course of its business, or purchased at judicial sales upon levy for such indebtedness, or otherwise purchased for the purpose of avoiding a loss to the co-operative;
14. to construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, water-courses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences that may advance the interests of the co-operative and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
15. to raise and assist in raising money for, and aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person or corporation and guarantee the performance or fulfilment of any contracts or obligations of any person or corporation, and in particular guarantee the payment of the principal of and interest on the debt obligations of any such person or corporation;
16. to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable or transferable instruments;
17. where authorized to do so by a special resolution and by such additional authorization as the articles provide, to sell, lease, exchange or otherwise dispose

of all or substantially all the property of the co-operative for such consideration as the co-operative thinks fit;

18. to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with the property of the co-operative in the ordinary course of its business;
19. to adopt such means of making known the products or services of the co-operative as may seem expedient, and in particular by advertising, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes and rewards and making donations;
20. to cause the co-operative to be registered and recognized in any foreign jurisdiction or any province or territory of Canada, and designate persons therein according to the laws of that foreign jurisdiction or that province or territory of Canada to represent the co-operative and to accept service for and on behalf of the co-operative of any process or suit;
21. to allot and issue fully-paid shares of the co-operative in payment or part payment of any property purchased or otherwise acquired by the co-operative or for any past services performed for the co-operative;
22. to distribute among the members of the co-operative in cash, kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner deemed advisable, any property of the co-operative, but not so as to decrease the capital of the co-operative unless the distribution is made for the purpose of enabling the co-operative to be dissolved or the distribution, apart from this paragraph, would be otherwise lawful;
23. to establish agencies and branches;
24. to take or hold mortgages, hypothecs, liens and charges to secure payment of the purchase price, or of any unpaid balance of the purchase price, of any part of the property of the co-operative of whatsoever kind sold by the co-operative, or for any money due to the co-operative from purchasers and others and to sell or otherwise dispose of any such mortgage, hypothec, lien or charge;

25. to pay all costs and expenses of or incidental to the incorporation and organization of the co-operative;
26. to invest and deal with the moneys of the co-operative not immediately required for the objects of the co-operative in such manner as may be determined;
27. to do any of the things authorized by this subsection and all things authorized by its articles as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;
28. to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the co-operative.

(3) Any of the powers set out in subsection 2 may be withheld or limited by the articles. Limited by articles

(4) Every co-operative may exercise its powers beyond the boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights. Powers to act outside of Ontario

16.—(1) No act of a co-operative and no transfer of real or personal property to or by a co-operative, otherwise lawful, that is heretofore or hereafter done or made, is invalid by reason of the fact that the co-operative was without capacity or power to do such act or make or receive such transfer, but such lack of capacity or power may be asserted, Acting outside powers

- (a) in a proceeding against the co-operative by a member under subsection 2;
- (b) in a proceeding by the co-operative, whether acting directly or through a receiver, liquidator, trustee or other legal representative or through members in a representative capacity, against a director or officer or former director or officer of the co-operative; or
- (c) as cause for the cancellation of the certificate of incorporation of the co-operative under section 166.

(2) A member of a co-operative may apply to a court of competent jurisdiction for an order to restrain the co-operative from doing any act or transferring or receiving the transfer of real or personal property on the ground that the co-operative lacks capacity or power for the purpose, and the court may, if it considers it to be just and equitable, grant an order prohibiting the co-operative from doing the act or transferring Restraining order

or receiving the transfer of the real or personal property, but, where the act or transfer sought to be restrained or prohibited is being or to be done or made under a contract to which the co-operative is a party,

- (a) all the parties to the contract shall be parties to the proceeding;
- (b) the court in granting the order may set aside the contract and allow the co-operative or other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the granting of the order and setting aside of the contract, other than anticipated profits from the contract.

Loans to
members,
directors,
etc.

17.—(1) A co-operative shall not make loans to any of its members, directors or employees or give directly or indirectly, by means of a loan, guarantee, the provision of security or otherwise, any financial assistance to any member, director or employee, except in the course of transactions of a type available to all members of the co-operative.

Liability of
directors
and officers

(2) Those directors and officers of a co-operative who authorize or consent to making a loan or giving financial assistance in contravention of subsection 1 are jointly and severally liable to the co-operative and to its creditors for any actual loss to the co-operative together with interest at the rate of 6 per cent a year.

Contracts

Contracts in
writing
under seal

18.—(1) A contract that if entered into by an individual person would by law be required to be in writing and under seal may be entered into on behalf of a co-operative in writing under the seal of the co-operative.

Contracts in
writing not
under seal

(2) A contract that if entered into by an individual person would by law be required to be in writing signed by the parties to be charged therewith may be entered into on behalf of a co-operative in writing signed by any person acting under its authority, express or implied.

Parol
contracts

(3) A contract that if entered into by an individual person would by law be valid although made by parol only and not reduced into writing may be entered into by parol on behalf of a co-operative by any person acting under its authority, express or implied.

19. A co-operative may, by writing under seal, empower any person, either generally or in respect of any specified matters, to execute, as its attorney and on its behalf in any place within or outside Ontario, documents to which it is a party in any capacity and that are required by law to be under seal, and every document signed by such attorney on behalf of the co-operative acting within the scope of his authority, express or implied, and under his seal binds the co-operative and has the same effect as if it were under the seal of the co-operative.

Power of
attorney

20.—(1) In this section,

Interpre-
tation

- (a) “contractor” means a person who enters into a pre-incorporation contract in the name of or on behalf of a co-operative before its incorporation;
- (b) “other party” means a person with whom a contractor enters into a preincorporation contract;
- (c) “preincorporation contract” means a contract entered into by a contractor in the name of or on behalf of a co-operative before its incorporation.

(2) A co-operative may adopt a preincorporation contract entered into in its name or on its behalf, and thereupon the co-operative is entitled to the benefits and is subject to the liabilities that were contracted in its name or on its behalf and the contractor ceases to be entitled to such benefits or to be subject to such liabilities.

Adoption of
preincor-
poration
contracts

(3) Where a preincorporation contract is not adopted by a co-operative, the contractor is entitled to the benefits and subject to the liabilities under the contract and is entitled to recover from the co-operative the value of any benefit received by the co-operative under the contract.

Non-
adoption of
preincor-
poration
contracts

(4) Whether or not a preincorporation contract is adopted by the co-operative, the other party may apply to the court which may, notwithstanding subsections 2 and 3, make an order fixing or apportioning liability as between the contractor and the co-operative in any manner the court considers just and equitable under the circumstances.

Application
to court
for relief

By-Laws and Resolutions

21. The directors may pass by-laws not contrary to this Act or to the articles to regulate,

By-laws

- (a) the allotment and issue of shares, the payment thereof, the issue of share certificates and the transfer and the registration of transfers of shares;
- (b) the admission of persons as members and as *ex officio* members and the qualification of and the conditions of membership;
- (c) the time for and the manner of election of directors;
- (d) the qualification and remuneration of directors including conditions on eligibility of directors of the co-operative by reference to a minimum annual volume of business conducted by a director with the co-operative;
- (e) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the co-operative and the security, if any, to be given by them to it;
- (f) the time and place and the notice to be given for the holding of meetings of the members and of the board of directors; the quorum at meetings of members and the procedure in all things at members' meetings and at meetings of the board of directors;
- (g) the payment of fees and dues of members;
- (h) the issue of membership cards and loan certificates;
- (i) the suspension and termination of memberships by the co-operative and by the members;
- (j) the conduct in all other particulars of the affairs of the co-operative.

Remuneration of directors

22. A by-law relating to the remuneration of a director as director shall fix the remuneration and the period for which it is to be paid.

Passing of by-laws

23. No by-law is effective until it is,

- (a) passed by the directors of a co-operative; and
- (b) confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the members of the co-operative duly called for that purpose, or such greater proportion of the votes cast as the articles provide.

Member Groups and Delegates

24.—(1) The directors may pass by-laws providing for, By-laws
re delegates

- (a) the division of its members into groups, either territorially or on the basis of common interest;
- (b) the election of some or all of its directors,
 - (i) by such groups on the basis of the number of members in each group or the volume of business done by each group with the co-operative, or both, or
 - (ii) for the groups in a defined geographical area, by the delegates of such groups meeting together;
- (c) the election of delegates and alternate delegates to represent each group on the basis of the number of members in each group or the volume of business done by each group with the co-operative, or both;
- (d) where all of the members are co-operatives, the election of delegates and alternate delegates to represent such co-operatives on the basis of the number of members in each co-operative or the volume of business done with each co-operative, or both;
- (e) the number and method of electing delegates;
- (f) the holding of meetings of delegates;
- (g) the authority of delegates at meetings or providing that a meeting of delegates shall for all purposes be deemed to be and to have all the powers of a meeting of the members;
- (h) the holding of meetings of members or delegates territorially or on the basis of common interest;
- (i) the payment of remuneration and expenses of delegates attending meetings.

(2) A delegate has only one vote and shall not vote by Voting
proxy.

(3) No person shall be elected a delegate who is not a Qualifi-
cation
of delegates
member, officer or director of the co-operative.

Saving

(4) No by-law under subsection 1 shall prohibit members from attending meetings of delegates and participating in the discussions at such meetings.

CAPITAL

Authorized Capital

Shares

25.—(1) The authorized capital of a co-operative shall be divided into shares with par value and may consist of shares of more than one class.

Par value

(2) Each class of shares shall have a par value of \$1 or any multiple thereof not exceeding \$100.

Authorized capital

(3) The authorized capital of the co-operative shall be expressed in Canadian currency in its articles and is an amount equal to the total of the products of the number of shares of each class multiplied by the par value thereof.

Common shares

26.—(1) The common shares of a co-operative shall be shares to which there is attached no preference, right, condition, restriction, limitation or prohibition set out in the articles of the co-operative other than the restriction on the allotment, issue or transfer.

Classes of shares

(2) Where a co-operative has only one class of shares, that class shall be common shares and designated as co-operative or co-op common shares.

Idem

(3) Where a co-operative has more than one class of shares, one class shall be common shares, designated as provided in subsection 2, and the other shares shall consist of one or more classes of preference shares and shall have attached thereto the designation co-operative or co-op preference shares and such other designation and preferences, rights, conditions, restrictions, limitations or prohibitions as set out in the articles.

Preference shares

(4) No class of preference shares shall be designated as preference shares or by words of like import, unless the class has attached thereto a preference or right over the common shares.

Preferences, rights, etc.

27. A co-operative may issue one or more classes of preference shares having attached thereto preferences, rights, conditions, restrictions, limitations or prohibitions, including but not limited to,

- (a) the right to cumulative, non-cumulative or partially cumulative dividends;

- (b) a preference over any other class or classes of shares as to the payment of dividends;
- (c) a preference over any other class or classes of shares as to the repayment of the par value together with any dividends declared but unpaid upon the dissolution of the co-operative or otherwise;
- (d) the right of the co-operative to redeem, without the consent of the holders thereof, all or a part of the shares of that class at their par value together with any dividends declared but unpaid.

28. Each share of a class shall be the same in all respects as every other share of that class. **Equality of shares of a class**

Issued Capital

29. The issued capital of a co-operative shall be expressed in Canadian currency and is an amount equal to the total of the products of the number of issued shares of each class multiplied by the par value thereof less such decreases in the issued capital as from time to time have been effected by the co-operative in accordance with this Act. **Issued capital**

30.—(1) Where an issued share of a class is cancelled, the issued capital is decreased by an amount equal to the par value of the shares of that class. **Cancellation of par share**

(2) Where a fraction of an issued share of a class is cancelled, the issued capital is decreased by an amount that bears the same proportion to the amount determined under subsection 1 that the fraction bears to a whole share of that class. **Cancellation of fractions of shares**

Redemption, Purchase and Surrender

31.—(1) Where the articles provide that the shares of a class of preference shares are redeemable without the consent of the holders thereof and part only of the preference shares are to be redeemed, the shares to be redeemed shall be selected, **Redemption of preference shares**

- (a) by lot in such manner as the board of directors determines;
- (b) as nearly as may be in proportion to the number of preference shares of the class registered in the name of each holder of shares of that class; or
- (c) in such other manner as the board of directors determines with the consent of the holders of prefer-

ence shares of the class obtained in the manner set out in subsection 2,

but the articles may confine the manner of selection to one or more of those methods set out in clauses *a*, *b* and *c*.

Insolvency (2) A co-operative shall not redeem shares under subsection 1 if the co-operative is insolvent or if the redemption would render the co-operative insolvent.

Method of redemption (3) Where shares of a class of preference shares are selected in the manner referred to in clause *c* of subsection 1, the selection shall be consented to in writing by,

(a) all the holders of the preference shares of the class;
or

(b) at least 95 per cent of the holders of the preference shares of the class holding at least 95 per cent of the issued shares of that class if, after twenty-one days notice has been given by sending notice to each of the holders of shares of that class addressed to him at his latest address as shown on the records of the co-operative, none of the holders of shares of that class dissents in writing to the co-operative.

Idem (4) Where a holder of redeemable preference shares of a co-operative dies or leaves its employment, notwithstanding subsection 1, it may within one year of such event redeem all or any of the preference shares held by him.

Purchase of preference and common shares

32.—(1) Subject to subsection 2, a co-operative,

(a) with the consent of the holder thereof, may purchase all or a part of the shares in the co-operative held by any person upon payment of such an amount to that person not exceeding the par value of the shares together with any dividends declared but unpaid;

(b) when a corporate member is about to be dissolved or a member has failed for a period of two years to transact any business with the co-operative, may redeem without the consent of such member his shares upon payment to him of an amount equal to the book value or par value of such shares, whichever is the lesser.

Insolvency (2) A co-operative shall not purchase or redeem shares under subsection 1 if the co-operative is insolvent or if the purchase would render the co-operative insolvent.

(3) Where shares are purchased or redeemed by a co-operative under subsection 1 or where preference shares are redeemed pursuant to the articles,

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the co-operative are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
 - (i) the board of directors may at the time of the purchase or redemption cancel the shares in which case the authorized and issued capital of the co-operative are thereby decreased and the articles are amended accordingly; or
 - (ii) the board of directors may resell the shares at such time and price and on such terms as it determines.

33.—(1) A co-operative may accept from any member a donation of any of its shares without any repayment of capital in respect thereof. Donation of shares

(2) Shares accepted under subsection 1 are not thereby cancelled, and the board of directors may sell the shares at such time and price and on such terms as it determines. Sale of donated shares

Offering Statement

34.—(1) Prior to the issue of any securities by a co-operative, the co-operative shall file with the Minister an offering statement and obtain a receipt therefor. Offering statement

(2) Subsection 1 does not apply to, Exception

- (a) the issue of shares under subsection 1 of section 56 or of debt obligations under subsection 4 of section 56; or
- (b) a co-operative that has fifteen or fewer members.

35.—(1) An offering statement shall provide full, true and plain disclosure of all material facts relating to the securities proposed to be issued. Standard of disclosure

(2) An offering statement shall comply as to form and content with the requirements of this Act and the regulations. Form and content

(3) There shall be filed with an offering statement such documents, reports and other material as are required by this Act and the regulations. Supporting material

**Material
changes**

(4) Where there is a material change in the facts set forth in an offering statement, whether before or after the issuance of a receipt therefor, the co-operative shall, within thirty days of that change, file with the Minister a statement of such change.

**Further
statements**

(5) A co-operative may, and shall if required by the Minister, file a further offering statement revised to give effect to all previous material changes in place of the statement of material change mentioned in subsection 4.

**Issue of
receipts**

36.—(1) The Minister may in his discretion issue a receipt for any statement filed under section 34 or subsections 4 or 5 of section 35 unless it appears to the Minister that,

(a) the statement or any document required to be filed therewith,

(i) fails to comply in any substantial respect with any of the requirements of this Act or the regulations,

(ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or

(iii) conceals or omits to state any material facts necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made; or

(b) the proceeds from the sale of the securities to which the statement relates that are to be paid into the treasury of the co-operative, together with other resources of the co-operative, are insufficient to accomplish the purpose of the issue stated in the statement.

Idem

(2) The Minister shall not make any determination under subsection 1 without making an order or ruling in writing and without giving the co-operative that filed the statement a prior opportunity to be heard.

**Inspection of
statement**

37.—(1) A copy of a statement for which the Minister has issued a receipt under section 36 shall be open to inspection,

(a) at the offices of the Ministry; and

(b) during normal business hours, at the head office of the co-operative.

(2) No person shall refuse to permit a person to inspect ^{Extracts} such statements or to make extracts therefrom.

38. A co-operative already in existence when this Act ^{Transition} comes into force shall have a period of 180 days from that date during which to comply with sections 34 to 37.

Allotment, Issue and Transfer

39.—(1) Shares shall not be allotted or issued except for a ^{Issue of shares} consideration at least equal to the product of the number of shares allotted or issued multiplied by the par value thereof.

(2) No share shall be issued until it is fully paid and a ^{Consideration for shares} share is not fully paid until all the consideration therefor in cash, property or services, as determined under this section, has been received by the co-operative.

(3) For the purposes of subsection 2 and paragraph 21 of ^{Idem} subsection 2 of section 15, a document evidencing indebtedness of the allottee does not constitute property and services shall be past services actually performed for the co-operative, and the value or property or services shall be the value the directors determine by express resolution to be in all the circumstances of the transaction the fair equivalent of the cash value.

40. No transfer of common shares in a co-operative with ^{Restriction on transfer of common shares} share capital, unless made by sale under execution or under the decree, order or judgment of a court of competent jurisdiction or by transmission to the personal representative of a member, is valid for any purpose unless,

- (a) the transfer has been authorized by resolution of the directors of the co-operative or by a person authorized by such a resolution to approve such transfers;
- (b) the transferee is admitted to membership in the co-operative as required by its articles and by-laws; and
- (c) the entry thereof has been duly made in the register of transfers of the co-operative or in a branch register of transfers,

except only as evidence of the rights of the parties thereto towards each other.

41.—(1) A co-operative may provide by by-law for the ^{Commission on sale of shares} payment of commissions or allowing discounts to persons in consideration of their subscribing or agreeing to subscribe,

whether absolutely or conditionally, for shares in the co-operative, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for such shares but no such commission or discount shall exceed 25 per cent of the amount of the subscription price.

No
unauthorized
commission

(2) Except as provided in subsection 1, no co-operative shall apply any of its shares or capital, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares of the co-operative or procuring or agreeing to procure subscriptions whether absolute or conditional, for such shares, whether the shares or capital is so applied by being added to the purchase money of any property acquired by the co-operative or to the contract price of any work to be executed for the co-operative, or is paid out of the nominal purchase money or contract price or otherwise.

Shares
personal
property

42. The shares of a co-operative are personal property and are transferable in such manner and subject to such conditions and restrictions as are prescribed by this Act and the articles of the co-operative.

Lien on
shares

43. Where the articles or by-laws so provide the co-operative has a lien to the extent of the debt on the shares registered in the name of a member who is indebted to the co-operative.

Share and Loan Certificates

Share and
loan
certificates

44.—(1) Every member is entitled to a share or loan certificate in respect of the shares held or loans made by him, signed by the proper officers in such form as the by-laws of the co-operative provide, but in no case is the co-operative bound to issue more than one share or loan certificate in respect of a share or shares held or a loan made jointly by several persons, and delivery of a share or loan certificate to one of several joint holders or lenders is sufficient delivery to all.

Fee

(2) A co-operative may charge a fee of not more than \$1 for every share certificate issued, except that in the case of the allotment and issue of shares, no fee shall be charged.

Signing of
certificate

45. A share or loan certificate shall be signed manually by at least one officer of the co-operative or by or on behalf of a transfer agent of the co-operative, and the co-operative may by by-law provide that any additional signatures required on share or loan certificates may be printed, engraved, litho-

graphed or otherwise mechanically reproduced thereon, and in such event share or loan certificates so signed are as valid as if they had been signed manually.

46.—(1) Every share or loan certificate shall state upon its face, Contents of certificates

- (a) the name of the co-operative and the words “A co-operative incorporated under the law of the Province of Ontario” or words of like effect;
- (b) the name of the person to whom the share or loan certificate is issued as holder;
- (c) the amount, maturity date and annual rate of interest where the certificate represents a loan;
- (d) the number and class of shares represented thereby and the par value thereof where the certificate represents shares;
- (e) a statement of the dividend rate, where applicable.

(2) Every share certificate shall have noted conspicuously thereon the words “Transfer of these shares is restricted”. Restrictions to be noted

(3) Where the articles or by-laws provide that a co-operative has a lien on shares as authorized by section 43, the right of the co-operative to the lien shall be noted conspicuously on every share certificate issued by the co-operative. Notice of lien

(4) In this section, “noted conspicuously” means written in such a way that the person against whom words so noted or appearing are to operate ought reasonably to notice them. Interpretation

47.—(1) A share certificate issued for a share of a class of preference shares shall, Contents of preference share certificate

- (a) legibly state on the certificate or have attached thereto a legible statement of the preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class of shares; or
- (b) legibly state on the certificate that there are preferences, rights, conditions, restrictions, prohibitions or limitations attaching to that class and that a copy of the full text thereof is obtainable on demand and without fee from the co-operative.

Idem

(2) Where a share certificate contains a statement as provided in clause *b* of subsection 1, the co-operative shall furnish to the holder of the shares on demand without fee a copy of the full text of the preferences, rights, conditions, restrictions, prohibitions and limitations attaching to the share.

Fractional shares

48. Where, as a result of a change in authorized capital of a co-operative, a person becomes entitled to a fraction of a share, he is not entitled to be registered on the records of the co-operative in respect thereof or to receive a share certificate therefor, but he is entitled to receive a bearer fractional certificate in respect to such fraction, and on presentation at the head office of the co-operative or at a place designated by the co-operative of bearer fractional certificates for fractions that together represent a whole share, a share certificate for a whole share shall be issued in exchange therefor.

Loan Capital

Member loans

49.—(1) The capital of co-operatives without share capital may be in the form of loans from members, called “member loans”, and such loans may be in such amounts, payable on demand or at such times and without interest or at interest not exceeding 8 per cent per annum, or if authorized by by-law of the co-operative, at such a lesser rate as the board of directors may by resolution determine.

Borrowing from members

(2) A co-operative may borrow money from its members not being loans made as a condition of membership or as compulsory loans of patronage returns, in such amounts payable on demand or at such times and either without interest or with interest at such rate as the by-laws provide or, if authorized by by-law, at such rate as the directors may by resolution determine.

Borrowing Powers

Borrowing powers

50.—(1) Where authorized by by-law, the directors may,

- (a) borrow money on the credit of the co-operative; or
- (b) issue, sell or pledge debt obligations of the co-operative; or
- (c) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal movable or immovable property of the co-operative, including book debts, rights, powers,

franchises and undertaking, to secure any debt obligations or any money borrowed or other debt or liability of the co-operative.

(2) Any by-law referred to in subsection 1 may,

Contents
of by-law

- (a) limit the amount to be borrowed as determined by the by-law; and
- (b) provide for the delegation by the directors of the powers conferred on them under the by-law to such directors or officers of the co-operative and to such extent and manner as is set out in the by-law.

51. Nothing in this Act prohibits the issue of debt obligations in bearer form.

Bearer
debt
obligations

52. A condition contained in a debt obligation or in an instrument for securing a debt obligation is not invalid by reason only that the debt obligation is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

Irredeemable
debt
obligations

53.—(1) Where a co-operative makes a charge, mortgage or other instrument of hypothecation or pledge to secure its debt obligations, the co-operative shall forthwith after the making thereof, file a duplicate original or certified copy of the instrument in the office of the Minister, but such filing may be made by any interested person.

Filing
debt
obligations

(2) Where the filing is by an interested person under subsection 1, that person is entitled to recover from the co-operative the amount of any prescribed fee paid by him on such filing.

Recovery
of fee

(3) Subsection 1 does not apply to an instrument filed or registered under any other Act.

Exception

DIVIDENDS AND SURPLUS

54. A co-operative may by by-law provide that, before any distribution of surplus arising from the business of the co-operative in each fiscal year is made, the co-operative may,

Reserve
fund and
dividends

- (a) set aside reserve funds;
- (b) provide for the payment of dividends on the share capital at a rate not to exceed 8 per cent per annum of the amount paid up thereon.

Surplus

Distribution
of net
surplus

55.—(1) Subject to subsection 4, the surplus arising from the business of a co-operative, other than a direct charge co-operative, in each fiscal year shall be allocated, credited or paid to the members in proportion to the business done by each member with or through the co-operative, computed at a rate in relation to the quantity, quality or value of the goods or products acquired, marketed, handled, dealt in or sold or services rendered by the member or by the co-operative from or on behalf of or to the member, or the co-operative whether as principal or as agent of the member or otherwise, with appropriate differences in the rate for different classes, grades or qualities thereof.

Idem

(2) The co-operative may by by-law provide that part of the surplus may be allocated, credited or paid to non-members at the same or at lesser rates than to members.

Patronage
return

(3) The amount that is allocated, credited or paid to members or non-members in each fiscal year shall be known as the patronage return.

Limitation
of patronage
return

(4) The co-operative may by by-law provide that, where the value of the goods or products acquired, marketed, handled, dealt in or sold, or services rendered by the co-operative from or on behalf of or to any member or non-member in any year does not exceed \$250, or such lesser amount as is specified in the by-law, no patronage return shall be allocated, credited or paid to such member or non-member.

Marketing
boards

(5) Where members of a co-operative are required by a marketing plan established under an Act of the Legislature, or of the Parliament of Canada, to sell or deliver products or goods or render services to or for a marketing board, then for the purposes of making a patronage return to the members of the co-operative, the members shall be deemed to have sold, delivered or rendered those goods, products or services to the co-operative.

Investment
of patronage
return

56.—(1) A co-operative may by by-law provide that in each fiscal year the whole, or such part as the directors may by resolution determine, of the patronage return of each member shall be applied to the purchase for the member of a stated number of unissued shares of the co-operative or a stated number of issued shares of the co-operative, if obtainable.

Notice

(2) Where a co-operative has enacted a by-law under subsection 1 and the whole or part of the patronage return of a

member is required to be invested in issued shares, the co-operative shall mail a written notice to each member stating the number of shares to be purchased by him.

(3) Unless within thirty days from the date of mailing of the notice referred to in subsection 2 the member required to purchase issued shares has presented for transfer to himself the number of shares that he is required to purchase, the co-operative may on behalf of such member, ^{Purchase of shares on behalf of member}

- (a) purchase the required number of shares from members who are willing to sell such shares;
- (b) pay out of the patronage return of such member the purchase price;
- (c) transfer such shares to the member; and
- (d) issue and forward to such member a certificate representing such shares.

(4) A co-operative may enact by-laws requiring its members to lend to it the whole, or such part as the directors may determine, of the patronage returns to which they may become entitled in each fiscal year upon such terms and at such rate of interest as the directors, if authorized by by-law, may by resolution determine, but in no case at a rate of interest greater than 8 per cent per annum. ^{Compulsory borrowing}

(5) No member shall be required under this section to purchase issued or unissued shares at a price in excess of the par value thereof or issued shares when no such shares are available for purchase. ^{Idem}

(6) Where the co-operative is insolvent, no member shall be required under this section to lend his patronage return or to purchase shares of the co-operative. ^{Idem}

(7) This section does not prevent a member from receiving so much of his patronage return as has not been appropriated to loans to the co-operative in accordance with a resolution of the board of directors or the by-laws. ^{Idem}

57.—(1) A co-operative may, when authorized by by-law, deduct a percentage amount from the moneys received by the co-operative on the goods, products or services marketed, handled or dealt in by the co-operative for or on behalf of any member. ^{Percentage deductions by co-operative}

(2) An amount retained by a co-operative under subsection 1 shall be applied by the co-operative, ^{Idem}

- (a) as a loan on such terms and at such rate of interest not exceeding 8 per cent per annum as the by-law provides; or
- (b) as an investment by the member in common shares of the co-operative, but no member shall be required to purchase such shares in the co-operative at a price in excess of the par value thereof.

Dividends

Power to
declare
dividends

58.—(1) Subject to subsection 2 and the articles of the co-operative, the directors may declare and the co-operative may pay dividends on its issued shares.

Not to
exceed 8 per
cent

(2) A dividend shall not exceed 8 per cent per annum of the par value of the share.

Manner of
payment

(3) A dividend may be paid in cash or in property not exceeding in value the amount of the dividend.

When
dividend
not to be
declared

(4) The directors shall not declare and the co-operative shall not pay any dividend when the co-operative is insolvent, or any dividend the payment of which renders the co-operative insolvent or that diminishes its capital.

Stock
dividends

59. For the amount of any dividend that the directors may declare payable in cash, they may declare a stock dividend and issue therefor shares of the co-operative as fully paid.

MEMBERS

Membership

Membership

60.—(1) Subject to the provisions of this Act and the articles of the co-operative, membership therein is governed by the by-laws of the co-operative.

Classes of
membership

(2) The articles of a co-operative may provide for more than one class of membership and in that case shall set forth the designation of and the terms and conditions attaching to each class.

Incor-
porators
deemed
members

61.—(1) Each incorporator of a co-operative who has subscribed for a common share in the co-operative or who has paid a membership fee, if any, shall upon the effective date of incorporation be entered upon the register of members.

(2) No person shall become a member of a co-operative until his application for membership has been approved by the directors and the applicant has complied fully with the by-laws governing admission of members. ^{Applicants for membership}

(3) A subscription for common shares in a co-operative with share capital constitutes an application for membership and the allotment of a common share to the applicant constitutes admission to membership. ^{Idem}

(4) An application for authorization of the transfer of common shares in a co-operative with share capital constitutes an application for membership and the passing of the resolution authorizing the transfer constitutes admission to membership. ^{Idem}

62. No transfer of a membership in a co-operative without share capital is valid for any purpose whatever, ^{Restrictions on transfer of memberships}

(a) unless a written application for membership by the transferee has been approved by a resolution of the directors of the co-operative or by a person authorized by such a resolution to approve such applications; and

(b) until notification of the approval under clause *a* has been sent the transferee and his name has been entered on a register of members,

except only as evidence of the rights of the parties thereto towards each other.

63.—(1) Subject to the by-laws of the co-operative, a person of the full age of sixteen years or more may become a member thereof. ^{Eligible age for members}

(2) Any person under the full age of eighteen years admitted to membership in the co-operative is competent to enter into any contract with the co-operative, and with respect to contracts with the co-operative is *sui juris*. ^{Members sui juris}

64.—(1) Subject to section 67, a member may withdraw from a co-operative by giving to the secretary of the co-operative six months notice of his intention to withdraw. ^{Notice of withdrawal}

(2) A deceased member shall be deemed to have given notice to the co-operative on the day of his death of his intention to withdraw. ^{Idem}

(3) Subject to subsection 4, where notice of intention to withdraw has been given to a co-operative under subsection 1, ^{Repayment to members on withdrawal}

or is deemed to have been given under subsection 2, the co-operative shall, within six months of the receipt thereof,

- (a) purchase for an amount equal to the par value together with all dividends declared but unpaid or for an amount that is less than par value and that is agreed to by the co-operative and the member or his personal representative, all shares in the co-operative held by the member; and
- (b) pay to him or his personal representative all amounts held to his credit, excluding term loans, together with any interest accrued thereon and the amount outstanding on loans made to the co-operative by the member that are repayable on demand by the member together with any interest accrued thereon.

Election by
member

(4) Notwithstanding subsection 3, a member who has given notice under subsection 1 may elect in such notice to retain all or some of his shares or loans in the co-operative.

Idem

(5) Where an election is made under subsection 4, the person may later withdraw some or all of his shares or loans from the co-operative by giving notice to the co-operative in the manner prescribed by subsection 1, and the co-operative shall, within six months of the receipt thereof,

- (a) purchase the shares at their par value or at a value that is less than par value and that is agreed to by the co-operative and such person;
- (b) pay to him the amounts held to his credit together with any interest accrued thereon; and
- (c) pay to him the amount outstanding on loans repayable on demand together with any interest accrued thereon,

that are referred to in the notice.

Extension
of time for
repayment

(6) Where, in the opinion of the directors of the co-operative, payments in accordance with subsection 3 or 5 would not be in the best interests of the co-operative, the directors may by resolution extend such payments over a period of not more than five years and pay in each year not less than 20 per cent of the amount to be repaid under subsection 3 or 5.

Dealing by
co-operative
with personal
representa-
tives

65.—(1) Where a person is shown on the records of a co-operative as holding a share as a personal representative, the receipt by such person is a valid and binding discharge to the co-operative for any payment or other distribution made in respect of the share whether notice of any trust has been

given to the co-operative or not, and the co-operative is not bound to see to the application of such payment or other distribution.

(2) Where shares are purchased by a co-operative under subsection 1 of section 32 or subsection 3 of section 64 or section 66 or accepted under subsection 1 of section 33 and are not thereby cancelled, no person is entitled to receive notice of or to vote at meetings of members or to receive any payment in respect of the shares whether by way of dividend or otherwise until such shares are resold. Co-operative not to vote, etc.

66.—(1) A member may be expelled from membership in a co-operative by resolution passed by a majority of the board of directors at a meeting duly called for the purpose not later than thirty days before the date set for the annual meeting of the co-operative. Expulsion of member

(2) A resolution under subsection 1 is not valid unless, Validity

- (a) prior written notice is given to the member setting forth the grounds upon which it is sought to expel him;
- (b) the notice is given such member ten days or more before the date of the meeting of the board of directors called to consider the resolution expelling that member; and
- (c) an opportunity is given such member to appear, either personally or by an agent or counsel, to make submissions at the meeting of the board of directors called to consider the resolution expelling that member.

(3) The secretary of the co-operative shall, within five days of the date of the meeting of the board of directors referred to in subsection 1, notify the member of the decision of the board by registered letter addressed to him at his latest known address. Notice of decision

(4) Where a resolution expelling a member is passed under subsections 1 and 2, the member may appeal the decision of the board of directors at the next annual or general meeting of members and the members by majority vote may confirm, vary or set aside that resolution. Appeal by member

(5) A member who wishes to appeal his expulsion to a meeting of members shall give notice of his intention to appeal within twenty-one days of receipt of the notice of expulsion mentioned in subsection 3, and the directors shall, if written representations are received seven or more days before the mailing of the notice of the meeting, at the expense of the co-operative, forward with the notice of the meeting a Idem

copy of such representations to each member entitled to receive notice of the meeting.

Effect of
expulsion

(6) Where a member has been expelled, the co-operative shall purchase from the member, within one year after his expulsion became final, at par value all his shares in the capital of the co-operative together with all amounts held to his credit together with any interest accrued thereon and the amount outstanding on loans, made to the co-operative by the member that are repayable on demand by the member together with interest accrued thereon.

Whereabouts
of member
unknown

(7) If the whereabouts of a member is unknown to the co-operative after all reasonable efforts have been made to ascertain his address for the purpose of making payment to him under subsection 6, amounts payable thereunder to him shall be transferred to a reserve fund of the co-operative; and any amounts so transferred shall, if claimed within thirty years after being so transferred by a person who produces evidence to the satisfaction of the directors of the co-operative that he is entitled thereto, be paid over to such person and, after the expiration of such thirty-year period, any amount so transferred shall be forfeited to the co-operative and transferred out of the reserve fund to it.

Where
repayment
not to be
made

67.—(1) A co-operative shall not exercise its powers under section 64 or 66,

- (a) if the co-operative is insolvent or if the exercise of its powers under that section would render the co-operative insolvent; or
- (b) if such exercise of its powers would in the opinion of the board of directors be detrimental to the financial stability of the co-operative.

Shares to be
cancelled or
resold

(2) Where the shares of a member are acquired under section 64 or 66,

- (a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the co-operative are thereby decreased, and the articles are amended accordingly;
- (b) if the articles do not require the shares to be cancelled,
 - (i) the board of directors may at the time of the purchase cancel the shares, in which case the authorized and issued capital of the co-

operative are thereby decreased and the articles are amended accordingly; or

- (ii) the board of directors may resell the shares at such time and price and on such terms as it determines.

Member's Rights

68.—(1) Subject to subsection 2, a member of a co-operative may maintain an action in a representative capacity for himself and all other members of the co-operative suing for and on behalf of the co-operative to enforce any right, duty or obligation owed to the co-operative under this Act or under any other statute or rule of law or equity that could be enforced by the co-operative itself, or to obtain damages for any breach of any such right, duty or obligation. Derivative action

(2) An action under subsection 1 shall not be commenced until the member has obtained an order of the court permitting the member to commence the action. Leave

(3) A member may, upon at least seven days notice to the co-operative, apply to the court for an order referred to in subsection 2, and, if the court is satisfied that, Application for order to commence action

- (a) the member was a member of the co-operative at the time of the transaction or other event giving rise to the cause of action;
- (b) the member has made reasonable efforts to cause the co-operative to commence or prosecute diligently the action on its own behalf; and
- (c) the member is acting in good faith and it is *prima facie* in the interests of the co-operative or its members that the action be commenced,

the court may make the order upon such terms as the court thinks fit, except that the order shall not require the member to give security for costs.

(4) At any time or from time to time while the action commenced under this section is pending, the plaintiff may apply to the court for an order for the payment to the plaintiff by the co-operative of reasonable interim costs including solicitor's and counsel fees and disbursements, for which interim costs the plaintiff shall be accountable to the co-operative if the action is dismissed with costs on final disposition at the trial or on appeal. Application for order for interim costs

Trial and
judgment

(5) An action commenced under this section shall be tried by the court and its judgment or order in the cause, unless the action is dismissed with costs, may include a provision that the reasonable costs of the action are payable to the plaintiff by the co-operative or other defendants taxed as between a solicitor and his own client.

Discontin-
uance and
settlement

(6) An action commenced under this section shall not be discontinued, settled or dismissed for want of prosecution without the approval of the court and, if the court determines that the interests of the members may be substantially affected by such discontinuance, settlement or dismissal, the court, in its discretion, may direct that notice in manner, form and content satisfactory to the court shall be given, at the expense of the co-operative or any other party to the action as the court directs to the members thereof whose interests the court determines will be so affected.

Rights of
dissenting
members

69.—(1) If, at a meeting of members of a co-operative,

- (a) a resolution passed by the directors authorizing the sale, lease, exchange or other disposition of all or substantially all the property of the co-operative is confirmed with or without variation by the members;
- (b) a resolution approving an agreement for the amalgamation of the co-operative with one or more other co-operatives is passed by the members;
- (c) a resolution passed by the directors approving the conversion of the co-operative into a corporation to which *The Business Corporations Act* applies is confirmed with or without variation by the members;
- (d) a resolution passed by the directors approving the conversion of the co-operative into one with or without share capital is confirmed with or without variation by the members; or
- (e) a resolution passed by the directors under section 159 is confirmed with or without variation by the members,

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any member who has voted against the confirmation of the resolution may within ten days after the date of the meeting give notice in writing to the co-operative requiring it to purchase his shares or refund the amount outstanding on loans made to the co-operative by the member together with any interest accrued thereon.

Co-operative
bound to
purchase
shares

(2) Within ninety days from,

- (a) the date of the completion of the sale, lease, exchange or other disposition;
- (b) the date set forth in the certificate of amendment or amalgamation; or
- (c) the date of delivery to the Minister of a request in writing for his authorization under section 159,

the co-operative, or amalgamated co-operative, shall purchase the shares of, or refund the amount outstanding on loans made to the co-operative by, every member who has given notice under subsection 1, and every such member shall sell or deliver up his securities to the co-operative.

(3) The amount and terms of the purchase of a member's ^{Purchase price} shares shall be at their par value or at a value that is less than par value and that is agreed to by the co-operative and the member together with all amounts held to his credit and with interest accrued thereon.

(4) The amount and terms of the repayment of any loans ^{Idem} made by the member to the co-operative shall be at the full amount outstanding together with any interest accrued thereon and unpaid.

(5) The co-operative shall not purchase any shares or repay ^{Saving} any member's loans under subsection 2 or 3 if it is insolvent or if the purchase or repayment would render it insolvent.

(6) If the sale, lease, exchange or other disposition is not ^{Idem} completed, the certificate of amendment or amalgamation is not issued, or the authorization of the Minister is not given, the rights of the dissenting member under this section cease and the co-operative shall not purchase the shares of the member nor refund the amount outstanding on loans made to the co-operative by the member under this section.

(7) Nothing in this section shall require a co-operative to ^{Idem} repay a member's term loan before the date of maturity.

70.—(1) Ten per cent of the members of a co-operative may ^{Requisition for by-law or resolution} requisition the directors to call a meeting of the directors for the purpose of passing any by-law or resolution that may properly be passed at a meeting of the directors duly called, constituted and held for that purpose.

(2) The requisition shall set out the by-law or resolution, as ^{Form of requisition} the case may be, that is required to be passed at the meeting and shall be signed by the requisitionists and deposited at the head office of the co-operative, and may consist of several documents in like form, each signed by one or more requisitionists.

Meeting of
directors

(3) Upon deposit of the requisition, the directors shall forthwith call a meeting of the directors for the purpose of passing the by-law or resolution, as the case may be, set out in the requisition.

Meeting of
members

(4) Where the directors do not, within twenty-one days from the date of the deposit of the requisition,

(a) call and hold such a meeting and pass such a by-law or resolution; and

(b) call a general meeting of the members for the purpose of confirming the by-law or resolution if the resolution requires confirmation at a general meeting of the members before it is effective,

any of the requisitionists may call a general meeting of the members for the purpose of passing such a by-law or resolution, and the meeting shall be held within sixty days from the date of the deposit of the requisition.

Notice

(5) A meeting of the members called under subsection 4 shall be called as nearly as possible in the same manner as meetings of members are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting.

Validity of
by-law or
resolution

(6) Where a by-law or resolution is passed at a meeting of the members called under subsection 4, either as set out in the requisition or as varied at the meeting, it is as valid and effective as if it had been passed at a meeting of the directors duly called, constituted and held for that purpose and confirmed at a meeting of the members duly called, constituted and held for that purpose, and if the resolution or by-law is passed by at least two-thirds of the votes cast at a meeting of the members called under subsection 4, it shall be conclusively deemed to be a special resolution or a by-law, as the case may be, for the purposes of this Act.

Repayment
of expenses

(7) The co-operative shall,

(a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the failure of the directors to act in accordance with subsections 3 and 4; and

(b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services, to such

of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting called under subsection 4, the members, by a majority of the votes cast, reject the reimbursement of the requisitionists.

(8) Where a by-law or resolution in respect of which a meeting of directors is requisitioned under this section is not passed or confirmed at a meeting of the members, no requisition for a meeting of directors in respect of a similar by-law or resolution shall be made for a period of at least two years.

New requisition on same subject

71.—(1) On the requisition in writing of 5 per cent of the members of the co-operative, the directors shall,

Circulation of members' resolutions, etc.

- (a) give to the members entitled to notice of the next meeting of members notice of any resolution that may properly be moved and is intended to be moved at that meeting; or
- (b) circulate to the members entitled to vote at the next meeting of members a statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or with respect to the business to be dealt with at that meeting.

(2) The notice or statement or both, as the case may be, shall be given or circulated by sending a copy thereof to each member entitled thereto in the same manner and at the same time as that prescribed by this Act, the articles or the by-laws, for the sending of notice of meetings of members.

Notice

(3) Where it is not practicable to send the notice or statement or both at the same time as the notice of the meeting is sent, the notice or statement or both shall be sent as soon as practicable thereafter.

Idem

(4) The directors are not bound under this section to give notice of any resolution or to circulate any statement unless,

Deposit of requisition, etc.

- (a) the requisition, signed by the requisitionists, is deposited at the head office of the co-operative,
 - (i) in the case of a requisition requiring notice of a resolution to be given, not less than twenty-one days before the meeting,
 - (ii) in the case of a requisition requiring a statement to be circulated, not less than fourteen days before the meeting; and

- (b) there is deposited with the requisition a sum reasonably sufficient to meet the expenses of the co-operative in giving effect thereto.

Where directors not bound to circulate statement

(5) The directors are not bound under this section to circulate any statement if, on the application of the co-operative or any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and on any such application the court may order the costs of the co-operative to be paid in whole or in part by the requisitionists notwithstanding that they are not parties to the application.

Where no liability

(6) No co-operative or a director, officer or employee thereof or person acting on its behalf, except a requisitionist, is liable in damages or otherwise by reason only of the giving of a notice or the circulation of a statement, or both, in compliance with this section.

Duty to deal with requisitioned matter

(7) Notwithstanding anything in the by-laws of the co-operative, where the requisitionists have complied with this section, the resolution, if any, mentioned in the requisition shall be dealt with at the meeting to which the requisition relates.

Repayment of expenses

(8) The co-operative shall pay to the requisitionists the sum deposited under clause *b* of subsection 4 unless at the meeting to which the requisition relates the members by a majority of the votes cast reject the repayment to the requisitionists.

Liabilities of Members

Liability on decrease of issued capital

72.—(1) Where the issued loan or share capital of a co-operative is decreased by an amendment to the articles, each person who was a member on the effective date of the amendment is individually liable to the creditors of the co-operative for the debts due on that date to an amount not exceeding the amount of the repayment to him.

Limitation of liability

(2) A person is not liable under subsection 1 unless,

- (a) the co-operative has been sued for the debt within six months after the effective date of the amendment and execution has been returned unsatisfied in whole or in part; and
- (b) he is sued for the debt in a court of competent jurisdiction within two years from the effective date of the amendment.

(3) After execution has been so returned, the amount due ^{Idem} on the execution, not exceeding the amount of the repayment to the person, is the amount recoverable against such person.

(4) Where it is made to appear that there are numerous ^{Class} members who may be liable under this section, the court ^{actions} of competent jurisdiction may permit an action to be brought against one or more of them as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such members as may be found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sum so determined.

(5) No person holding shares or loans in the capacity of a ^{Member in} personal representative and registered on the records of the ^{fiduciary} co-operative as a member and therein described as representing ^{capacity} in such capacity a named estate, person or trust is personally liable under this section, but the estate, person or trust is subject to all liabilities imposed by this section.

73. A member of a co-operative as such is not answerable ^{Member's} or responsible for any act, default, obligation or liability of the ^{liability} co-operative or for any engagement, claim, payment, loss, ^{limited} injury, transaction, matter or thing relating to or connected with the co-operative.

Meetings of Members

74.—(1) Subject to subsections 2 and 3, the meetings of ^{Place of} the members shall be held at the place where the head office ^{meetings} of the co-operative is located.

(2) Where the by-laws of the co-operative so provide, the ^{Exception} meetings of the members may be held at any place within Ontario.

(3) Where the articles of the co-operative so provide, the ^{Idem} meetings of the members may be held at one or more places outside Ontario specified therein.

75.—(1) Subject to subsection 2 and in the absence of other ^{Members'} provisions in that behalf in the articles or by-laws of the ^{meetings} co-operative,

- (a) notice of the time and place for holding a meeting of the members shall be given to each person who is entitled to notice of meetings and who on the record date for notice appears on the records of the co-

operative as a member by sending the notice by prepaid mail to his latest address as shown on the records of the co-operative ten days or more before the date of the meeting but in no case more than fifty days before the date of the meeting;

- (b) all questions proposed for the consideration of the members at a meeting of members shall be determined by the majority of the votes cast, and the chairman presiding at the meeting has a second or casting vote in case of an equality of votes;
- (c) the chairman presiding at a meeting of members may, with the consent of the meeting and subject to such conditions as the meeting decides, adjourn the meeting from time to time and from place to place;
- (d) the president or, in his absence, a vice-president who is a director shall preside as chairman at a meeting of members, but, if there is no president or such a vice-president or if at a meeting neither of them is present within fifteen minutes after the time appointed for the holding of the meeting, the members present shall choose a person from their number to be the chairman;
- (e) unless a poll is demanded, an entry in the minutes of a meeting of members to the effect that the chairman declared a motion to be carried is admissible in evidence as *prima facie* proof of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.

Notice

(2) The articles or by-laws of the co-operative shall not provide for fewer than ten days notice for meetings of members and in no case shall notice be given fifty days before the date of the meeting and the articles or by-laws shall not provide that notice may be given otherwise than individually.

Poll

(3) If a poll is demanded, it shall be taken in such manner as the by-laws prescribe, and, if the by-laws make no provision therefor, then as the chairman directs.

Voting

76.—(1) A member of a co-operative has only one vote.

Proxies prohibited

(2) Subject to subsection 3, no member of a co-operative shall vote by proxy.

Voting by corporation

(3) A corporate member may appoint under its corporate seal one of its directors or officers to attend and vote on its

behalf at meetings of members and such director or officer has only one vote.

77. A co-operative shall hold an annual meeting of its members not later than eighteen months after its incorporation and subsequently not more than fifteen months after the holding of the last preceding annual meeting and at such meeting any member shall have an opportunity to raise any matter relevant to the affairs and business of the co-operative. Annual meetings

78. The directors may at any time call a general meeting of the members for the transaction of any business, the general nature of which is specified in the notice calling the meeting. General meetings

79.—(1) Five per cent of the members of a co-operative may requisition the directors to call a general meeting of the members for any purpose that is connected with the affairs of the co-operative and that is not inconsistent with this Act. Requisition for members' meeting

(2) The requisition shall state the general nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the head office of the co-operative and may consist of several documents in like form, each signed by one or more requisitionists. Requisition

(3) Upon deposit of the requisition, the directors shall forthwith call a general meeting of the members for the transaction of the business stated in the requisition. Duty of directors to call meeting

(4) If the directors do not within thirty days from the date of the deposit of the requisition call and hold the meeting, any of the requisitionists may call the meeting, which shall be held within sixty days from the date of the deposit of the requisition. When requisitionists may call meeting

(5) A meeting called under this section shall be called as nearly as possible in the same manner as meetings of members are called under the by-laws, but, if the by-laws provide for more than twenty-one days notice of meetings, twenty-one days notice is sufficient for the calling of the meeting. Calling of meeting

(6) The co-operative shall, Repayment of expenses

- (a) reimburse the requisitionists for any reasonable expenses incurred by them by reason of the action taken by them under subsection 4; and
- (b) retain out of any moneys due or to become due, by way of fees or other remuneration for their services,

to such of the directors as were in default, an amount equal to the amount the requisitionists were reimbursed,

unless, at the meeting, the members by a majority of the votes cast reject the reimbursement of the requisitionists.

Requisition
by court
order

80. Notwithstanding section 79, upon application by a member of a co-operative, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the co-operative or its members that the meeting be held on requisition, may make an order, upon such terms as to security for the costs of holding the meeting or otherwise as to the court seem fit, requiring the directors to call a general meeting of the members for any purpose that is connected with the affairs of the co-operative and that is not inconsistent with this Act.

Court may
direct
method of
holding
meetings

81. If for any reason it is impracticable to call a meeting of members of a co-operative in any manner in which meetings of members may be called or to conduct the meeting in the manner prescribed by this Act, the articles or by-laws, the court may, on the application of a director or a member who would be entitled to vote at the meeting, order a meeting to be called, held and conducted in such manner as the court thinks fit, and any meeting called, held and conducted in accordance with the order shall for all purposes be deemed to be a meeting of members of the co-operative duly called, held and conducted.

Record
dates

82. The by-laws may provide for the fixing in advance of a date as the record date,

- (a) for the determination of the members entitled to notice of meetings of the members, which record date for notice shall not be more than fifty days before the date of the meeting and not fewer than the minimum number of days for notice of the meeting and where no such record date for notice is fixed, the record date for notice shall be at the close of business on the day next preceding the day on which notice is given or sent; and
- (b) for the determination of the members entitled to vote at meetings of the members which record date for voting shall not be more than two days, excluding Saturdays and holidays, before the date of the meeting and where no such record date for voting is fixed, the record date for voting shall be the time of the taking of the vote.

83.—(1) Where a person holds shares as a personal representative of a member, the personal representative is entitled to vote at all meetings of members. Personal representative

(2) Where a person mortgages or hypothecates his shares, that person is the person entitled to vote at all meetings of members unless, in the instrument creating the mortgage or hypothec, he has expressly empowered the person holding the mortgage or hypothec to vote, in which case, subject to the articles, such holder is the person entitled to vote. Mortgagee, etc.

84. Where two or more persons hold the same share or shares jointly, any one of such persons present at a meeting of members has the right in the absence of the other or others to vote, but, if more than one of such persons are present and vote, they shall vote together as one on the share or shares jointly held by them. Joint shareholders

DIRECTORS AND OFFICERS

Directors

85.—(1) Every co-operative shall have a board of directors however designated. Board of directors

(2) The board of directors shall consist of a fixed number of directors, not fewer than five. Composition

(3) A majority of directors on the board of directors of every co-operative shall be resident Canadians. Idem

86.—(1) Each of the persons named as first directors in the articles of a co-operative is a director of the co-operative until replaced by a person duly elected or appointed in his stead. First directors

(2) The first directors of a co-operative have all the powers and duties and are subject to all the liabilities of directors. Idem

87. No person shall be a director of a co-operative unless he is a member thereof or a director, officer, shareholder or member of a corporate member thereof, and, where a director or a corporation of which he is an officer, director, shareholder or member ceases to be a member, he thereupon ceases to be a director. Directors to be members

88.—(1) A co-operative may by by-law increase or, subject to subsection 2 of section 85, decrease the number of its directors as set out in its articles. Change in number of directors

(2) Where a co-operative incorporated under *The Co-operative Companies Act* or a predecessor of that Act or under a general or special Act of the Legislature before the coming into First R.S.O. 1970, c. 89

force of this Act has fewer than five directors, it shall, under subsection 1, within two years of the coming into force of this Act, increase the number of its directors to not fewer than five.

Filing of
by-law

(3) A co-operative shall file with the Minister a certified copy of the by-law within ten days after the by-law has been confirmed by the members.

Validity

(4) Failure to comply with subsection 3 does not affect the validity of the by-law.

Age of
directors

89.—(1) No person under eighteen years of age shall be a director of a co-operative.

Qualifications

(2) No undischarged bankrupt or mentally incompetent person shall be a director, and, if a director becomes a bankrupt or a mentally incompetent person, he thereupon ceases to be a director.

Consent

(3) A person who is elected or appointed a director is not a director unless,

(a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as director;

(b) where he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.

Idem

(4) For the purposes of subsection 3, a person who is elected or appointed as director and refuses under clause *a* of subsection 3 or fails to consent under clause *b* of subsection 3 shall be deemed not to have been elected or appointed as a director.

Election of
directors

90.—(1) The directors shall be elected by the members in general meeting, and the election shall be by ballot in the manner prescribed by section 91.

Idem

(2) The election of directors shall take place yearly or at such other interval not exceeding five years as is provided by the articles and all the directors then in office shall retire, but are eligible for re-election.

Continuance
in office

(3) If an election of directors is not held within the prescribed period, the directors continue in office until their successors are elected.

(4) The articles or by-laws may provide for the election and retirement of directors in rotation, but in that case no director shall be elected for a term of more than five years and at least two directors shall retire from office in each year. Rotation

(5) It shall not be necessary for all directors to hold office for the same term. Idem

91. Every member entitled to vote at an election of directors, if he votes, shall cast thereat a number of votes equal to the number of directors to be elected, and the member shall distribute the votes among the candidates in such manner as he sees fit, but no candidate shall receive more than one vote from each member. Voting for directors

92.—(1) Subject to subsection 2, where a vacancy occurs in the board, and a quorum of directors remains, the directors remaining in office may appoint a qualified person to fill the vacancy for the remainder of the term, but the articles may provide that such vacancy may only be filled by election at a general meeting of the members duly called for that purpose. Vacancies

(2) Where the number of directors is increased, the vacancies resulting from such increase shall only be filled by election at a general meeting of the members duly called for that purpose. Idem

(3) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a general meeting of the members to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any member. Idem, where no quorum

93. Unless the articles or by-laws otherwise provide, a majority of the board of directors constitutes a quorum, but in no case shall a quorum be less than two-fifths of the board of directors. Quorum of directors

94.—(1) Subject to subsection 2, the meetings of the board of directors and the executive committee shall be held at the place where the head office of the co-operative is located. Place of meetings

(2) Where the by-laws of the co-operative so provide, the meetings of the board of directors and of the executive committee may be held at any place within or outside Ontario, but in any financial year of the co-operative a majority of the meetings of the board of directors and a majority of the meetings of the executive committee shall be held at a place within Canada. Exception

(3) Subject to the by-laws of the co-operative, where all the directors have consented thereto, any director may par- Meetings by telephone

participate in a meeting of the board of directors or of the executive committee by means of conference, telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a director participating in a meeting pursuant to this subsection shall be deemed for the purposes of this Act to be present in person at that meeting.

Place of
meetings by
telephone

(4) If a majority of the directors participating in a meeting held pursuant to subsection 3 are then in Canada, the meeting shall be deemed to have been held in Canada.

Calling
meetings of
directors

95.—(1) In addition to any other provision in the articles or by-laws of a co-operative for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting.

Notice

(2) In the absence of any other provision in that behalf in the by-laws of the co-operative, notice of the time and place for the holding of the meeting called under subsection 1 shall be given to every director of the co-operative by sending the notice by prepaid mail ten days or more before the date of the meeting to his latest address as shown on the records of the co-operative.

Duties

96.—(1) The board of directors shall manage or supervise the management of the affairs and business of the co-operative.

Conduct of
business

(2) Subject to section 97, no business of a co-operative shall be transacted by its board of directors except at a meeting of directors at which a quorum of the board is present and at which a majority of the directors present are resident Canadians.

Idem

(3) Where there is a vacancy or vacancies in the board of directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office.

Executive
committee

97.—(1) Where the number of directors of a co-operative is more than six, and if authorized by a by-law, the directors may elect from among their number an executive committee consisting of not fewer than three of whom a majority shall be resident Canadians and may delegate to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors.

Quorum

(2) An executive committee may fix its quorum, which shall be not less than a majority of its members.

(3) No business shall be transacted by an executive committee except at a meeting of its members at which a quorum of the executive committee is present and at which a majority of the members present are resident Canadians. Conduct of business

98.—(1) Every director of a co-operative who has, directly or indirectly, any interest in any contract or transaction to which the co-operative or a subsidiary thereof is or is to be a party, other than a contract or transaction in which his interest is limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the co-operative and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of property by or to the co-operative or a subsidiary thereof, the cost of the property to the purchaser and the cost thereof to the seller, if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such interest or information is within his knowledge or control, and shall not vote and shall not in respect of such contract or transaction be counted in the quorum. Disclosure by directors of interests in contracts

(2) Subsection 1 does not require the disclosure of any interest in any contract or transaction unless, Interest to be material

- (a) the interest and the contract or transaction are both material; or
- (b) the subject of the contract or transaction is of a type not available to all members of the co-operative.

(3) The declaration required by this section shall be made at the meeting of the directors at which the proposed contract or transaction is first considered, or if the director is not at the date of the meeting interested in the proposed contract or transaction, at the next meeting of the directors held after he becomes so interested, or if the director becomes interested in a contract or transaction after it is entered into, at the first meeting of the directors held after he becomes so interested, or if a contract or a proposed contract or transaction is one that in the ordinary course of the co-operative's business, would not require approval by the directors or shareholders, at the first meeting of the directors held after the director becomes aware of it. When declaration of interest to be made

(4) If a director has made a declaration and disclosure of his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the co-operative, the director, if he was acting honestly and in good Effect of declaration

faith at the time the contract or transaction was entered into, is not by reason only of his holding the office of director accountable to the co-operative or to its members for any profit or gain realized from the contract or transaction, and the contract or transaction, if it was in the best interests of the co-operative at the time the contract or transaction was entered into, is not voidable by reason only of the director's interest therein.

Confirmation
by members

(5) Notwithstanding anything in this section, a director, if he was acting honestly and in good faith, is not accountable to the co-operative or to its members for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction, if it was in the best interests of the co-operative at the time it was entered into, is not by reason only of the director's interest therein voidable,

(a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose; and

(b) if the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting.

General
notice of
interest

(6) For the purposes of this section, a general notice to the directors by a director declaring that he is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the co-operative is a sufficient declaration of interest in relation to any contract so made.

Liability of
directors re
purchase of
shares

99.—(1) Where a co-operative acquires any of its shares or repays any of its loans in contravention of this Act or the articles, the directors who voted in favour of or consented to the resolution authorizing the acquisition or repayment are jointly and severally liable to the co-operative to the extent of the amount paid out.

Application
to court

(2) Where a co-operative acquires any of its shares or repays any of its loans in contravention of this Act or the articles,

(a) any member of the co-operative; or

(b) where the acquisition or repayment is in contravention of subsection 2 of section 32, subsection 1

of section 67 or section 69, any creditor of the co-operative who was a creditor at the time of the acquisition or repayment,

may apply to the court within two years of the acquisition or repayment and the court may, if it considers it to be just and equitable under the circumstances, make an order making any member whose shares were acquired liable to the co-operative jointly and severally with the directors, to the extent of the amount paid to him.

100. Where any dividend is declared and paid in contra-
vention of section 58, Liability
of directors
re dividends

- (a) the directors who voted in favour of or consented to the resolution authorizing the declaration of the dividend are jointly and severally liable to the co-operative to the extent of the amount of the dividend so declared and paid or such part thereof as renders the co-operative insolvent or diminishes its capital; and
- (b) any member of the co-operative or any creditor of the co-operative who was a creditor at the time of the declaration of the dividend may apply to the court within two years of the declaration, and the court may, if it considers it to be just and equitable under the circumstances, make an order making any member to whom the dividend is paid jointly and severally liable with the directors to the extent of the amount of the dividend paid to him.

101.—(1) A director who was present at a meeting of the board of directors or an executive committee thereof when, Consent of
director at
meeting

- (a) the redemption or purchase of shares of the co-operative is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) the repayment of loans to members is authorized,

shall be deemed to have consented thereto unless,

- (d) his dissent is entered in the minutes of the meeting;
- (e) he files his written dissent with the person acting as secretary of the meeting before its adjournment; or

- (f) he delivers or sends his dissent by registered mail to the co-operative immediately after the adjournment of the meeting,

and within seven days after complying with clause *d*, *e* or *f* he sends a copy of his dissent by registered mail to the Minister.

Idem

(2) A director who voted in favour of a matter referred to in subsection 1 is not entitled to dissent under subsection 1.

Consent of director not at meeting

(3) A director who was not present at a meeting of the board of directors or any executive committee thereof when,

- (a) the redemption or purchase of shares of the co-operative is authorized;
- (b) the declaration and payment of a dividend is authorized; or
- (c) the repayment of loans to members is authorized,

shall be deemed to have consented thereto unless,

- (d) he delivers or sends to the co-operative by registered mail his dissent; or
- (e) he causes his dissent to be filed with the minutes of the meeting,

within seven days after he becomes aware of the authorization referred to in clause *a*, *b* or *c* and unless, within seven days after complying with clause *d* or *e*, he sends a copy of his dissent by registered mail to the Minister.

Exception to liability

102.—(1) A director is not liable under section 99 or 100 if, in the circumstances, he discharged his duty to the co-operative in accordance with section 108.

Liability not excluded

(2) The liability imposed by this Act upon a director is in addition to any other liability that is by law imposed upon him.

Liability of directors for wages
R.S.O. 1970,
cc. 263, 147

103.—(1) The directors of a co-operative are jointly and severally liable to the employees of the co-operative to whom *The Master and Servant Act* applies for all debts that become due while they are directors for services performed for the co-operative, not exceeding six months wages, and for the vacation pay accrued for not more than twelve months under *The Employment Standards Act* and the regulations thereunder or under any collective agreement made by the co-operative.

(2) A director is liable under subsection 1,

Limitation of
liability

(a) only if,

(i) the co-operative has been sued for the debt within six months after it has become due and execution against the co-operative has been returned unsatisfied in whole or in part, or

(ii) the co-operative has within that period gone into liquidation or has been ordered to be wound up or has made an authorized assignment under the *Bankruptcy Act* (Canada), or a receiving order under the *Bankruptcy Act* (Canada) has been made against it and, in any such case, the claim for the debt has been proved; and

R.S.C. 1970,
c. B-3

(b) he is sued for the debt while he is a director or within two years after he ceases to be a director.

(3) After execution has been so returned against the co-operative, the amount recoverable against the director is the amount remaining unsatisfied on the execution. Idem

(4) If the claim for the debt has been proved in liquidation or winding-up proceedings or under the *Bankruptcy Act* (Canada), a director who pays the debt is entitled to any preference that the creditor paid would have been entitled to or, if a judgment has been recovered for the debt, the director is entitled to an assignment of the judgment. Rights of
director
who pays
the debt

104. The members may, by resolution passed by a majority of the votes cast at a general meeting duly called for that purpose, remove any director before the expiration of his term of office and may, by a majority of the votes cast at the meeting, elect any person in his stead for the remainder of his term. Removal of
directors

Officers

105.—(1) A co-operative shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors. Officers

(2) In the absence of other provisions in that behalf in the articles or by-laws, the directors, Election and
appointment

(a) shall elect the president from among themselves;

- (b) shall appoint or elect the secretary; and
- (c) may appoint or elect one or more vice-presidents or other officers.

Chairman
of the board

106. A co-operative may by by-law,

- (a) provide for the election or appointment by the directors from among themselves of a chairman of the board;
- (b) define the duties of the chairman;
- (c) assign to the chairman all or any of the duties of the president or of any other officer of the co-operative,

and, if the by-law assigns to the chairman any of the duties of the president, it shall also fix and prescribe the duties of the president.

Qualifica-
tions of
chairman
and president

107. Unless the articles or by-laws otherwise provide, no person shall be the president of a co-operative unless he is a director of the co-operative, but no other officer except the chairman of the board need be a director.

General

Standard of
care of
directors and
officers

108. Every director and officer of a co-operative shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the co-operative, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Validity of
acts of
directors and
officers

109. An act done by a director or by an officer is not invalid by reason only of any defect that is thereafter discovered in his appointment, election or qualification.

Indemnifica-
tion of
directors and
officers

110.—(1) Subject to subsection 2, the by-laws of a co-operative may provide that every director and officer of the co-operative and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the co-operative from and against,

- (a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and

- (b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the co-operative.

(2) No director or officer of a co-operative shall be indemnified by the co-operative in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant.

(3) A co-operative may purchase and maintain insurance for the benefit of a director or officer thereof, except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of a contravention of section 108.

INSIDERS

111.—(1) Every insider of a co-operative or associate or affiliate of such insider who, in connection with a transaction relating to the securities of the co-operative, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person for any direct loss suffered by such person as a result of the transaction, unless the information was known or ought reasonably to have been known to such person at the time of the transaction, and is also accountable to the co-operative for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of the transaction.

(2) An action to enforce any right created by subsection 1 may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action.

(3) In this section,

(a) “associate”, where used to indicate a relationship with any person, means,

- (i) any corporation of which such person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding,

- (ii) any partner of that person acting by or for the partnership of which they are both partners,
 - (iii) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity,
 - (iv) any spouse, son or daughter of that person, or
 - (v) any relative of such person or of his spouse, other than a relative referred to in subclause iv, who has the same home as such person;
- (b) “insider” or “insider of a co-operative” means any director or senior officer of a co-operative.

Idem

(4) For the purposes of this section, one corporation shall be deemed to be affiliated with another corporation if, but only if, one of them is the subsidiary of the other.

Order to
commence
action

112.—(1) Upon application by any person who was at the time of a transaction referred to in subsection 1 of section 111 or is at the time of the application an owner of securities of the co-operative, the court may, if satisfied that,

- (a) such person has reasonable grounds for believing that the co-operative has a cause of action under section 111; and
- (b) either,
 - (i) the co-operative has refused or failed to commence an action under section 111 within sixty days after receipt of a written request from such person so to do, or
 - (ii) the co-operative has failed to prosecute diligently an action commenced by it under section 111,

make an order, upon such terms as to security for costs and otherwise as to the court seems fit, requiring the Minister to commence or continue an action in the name of and on behalf of the co-operative to enforce the liability created by section 111.

(2) The applicant under subsection 1 shall give to the co-operative and the Minister notice of his application, and the co-operative and the Minister have the right to appear and be heard thereon. Notice

(3) Every order made under subsection 1 shall provide that the co-operative shall co-operate fully with the Minister in the institution and prosecution of the action and shall make available to the Minister all records, documents and other material or information known to the co-operative or reasonably ascertainable by the co-operative relevant to the action. Order to co-operate

RECORDS

113.—(1) Where this Act requires a record to be kept by a co-operative, it may be kept in a bound or looseleaf book, or by means of a mechanical, electronic or other device. Records

(2) Where a record is not kept in a bound book, the co-operative shall, Where not in bound book

- (a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and
- (b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the record.

(3) The bound or looseleaf book or, where the record is not kept in a bound or looseleaf book, the information in the form in which it is made available under clause *b* of subsection 2 is admissible in evidence as *prima facie* proof, before and after dissolution of the co-operative, of all facts stated therein. Admissibility of records in evidence

(4) No person shall remove, withhold or destroy information required by this Act or the regulations to be recorded, or, False information

- (a) record or assist in recording any information in a record; or
- (b) make information purporting to be accurate available in a form referred to in clause *b* of subsection 2,

knowing it to be untrue.

114. A co-operative shall cause to be kept the following records: Records

1. A copy of the articles of the co-operative.

2. All by-laws and resolutions, including special resolutions of the co-operative.
3. A register of members and security holders in which is set out the names alphabetically arranged or alphabetically indexed in appropriate categories of,
 - i. in a co-operative with share capital, all persons who are or have been within ten years registered as holders of shares in the co-operative and the address including the street and number, if any, of every such person while a holder, in which are set out also the number and class of shares held by such holder,
 - ii. in a co-operative without share capital, all persons who are or have been within ten years registered as members of the co-operative and the address including the street and number, if any, of every such person while a member,
 - iii. in a co-operative with or without share capital, all persons who are or who have been holders of debt obligations other than debt obligations in bearer form of the co-operative and the address including the street and number, if any, of every such person while a holder in which are set out also the class or series and principal amount of the debt obligations held by such holder.
4. A register of directors in which are set out the names and residence addresses while directors, including the street and number, if any, of all persons who are or have been directors of the co-operative with the several dates on which they have become or ceased to be a director.
5. Proper accounting records in which are set out all financial and other transactions of the corporation including, without limiting the generality of the foregoing, records of,
 - i. all sums of money received and disbursed by the co-operative and the matters with respect to which receipt and disbursement took place,
 - ii. all sales and purchases of the co-operative,
 - iii. the assets and liabilities of the co-operative, and

iv. all other transactions affecting the financial position of the co-operative.

6. The minutes of all proceedings at meetings of members, directors and any executive committee.

115. Every co-operative shall cause to be kept a register of transfers in which all transfers of securities issued by the co-operative in registered form and the date and other particulars of each transfer shall be set out. Register of transfers

116. A co-operative may appoint a registrar and a transfer agent to keep the register of security holders and the register of transfers. Transfer agent

117.—(1) The register of security holders and the register of transfers shall be kept at the head office of the co-operative or at such other office or place in Ontario as is appointed by resolution of the directors. Where registers to be kept

(2) Registration of the transfer of a security of the co-operative in the register of transfers is a complete and valid registration for all purposes. Valid registration

(3) A co-operative, registrar or transfer agent is not liable to produce a security certificate or any document that is evidence of the issue or transfer of the security certificate after six years, Destruction of spent documents

(a) in the case of a share certificate from the date of its cancellation; or

(b) in the case of a certificate representing a debt obligation, from the date of retirement of the whole debt obligation of which the certificate represents a part.

118.—(1) The records mentioned in sections 114 and 115 shall, during the normal business hours of the co-operative, be open to examination by any director and shall, except as provided in section 117 and in subsections 2 and 3 of this section, be kept at the head office of the co-operative. Records open to examination by directors

(2) A co-operative may keep at any place where it conducts its affairs such parts of the accounting records as relate to the operations, business and assets and liabilities of the co-operative carried on, supervised or accounted for at such place, but there shall be kept at the head office of the co-operative or such other place as is authorized under subsection 3 such records as will enable the directors to ascertain quarterly with reasonable accuracy the financial position of the co-operative. Records of account at branch

Order for
removal of
records

(3) Where a co-operative,

- (a) shows, to the satisfaction of the Minister, the necessity of keeping all or any of the records mentioned in subsection 1 at a place other than the head office of the co-operative; and
- (b) gives to the Minister adequate assurance, by surety bond or otherwise, that such records will be open for examination,
 - (i) at the head office or some other place in Ontario designated by the Minister, and
 - (ii) by any person who is entitled to examine them and who has applied to the Minister for such an examination,

the Minister may, by order and upon such terms as he thinks fit, permit the co-operative to keep such of them at such place or places, other than the head office, as he thinks fit and the Minister may by order and upon such terms as he sees fit rescind any such order.

Examination
of records
by members
and creditors

119.—(1) Subject to section 120, the records of a co-operative mentioned in section 114 or 115, other than accounting records, resolutions of directors and the minutes of proceedings at meetings of directors and any executive committee, shall, during the normal business hours of the co-operative and at the place or places where they are kept, be open to examination by the members and creditors or their agents or personal representatives, and any of them may make extracts therefrom.

Idem

(2) No person shall refuse to permit a person entitled thereto to inspect such records or to make extracts therefrom.

Lists of
members
and security
holders

120.—(1) Any member or creditor, upon filing with the co-operative or its agent the affidavit referred to in subsection 2 may,

- (a) make or cause to be made; or
- (b) require a co-operative or its transfer agent to make, upon payment of a reasonable charge therefor,

a list setting out the names alphabetically arranged of all or any members or security holders or both of the co-operative and the addresses of each such person as shown on the records of the co-operative made up to a date not more than ten days before the date of filing the affidavit.

(2) The affidavit referred to in subsection 1 shall be made ^{Form of affidavits} by the applicant and shall be in the following form:

Form of Affidavit

Province of Ontario }
County of

In the matter of
(Insert name of co-operative)

I, of the of

in the of

do make oath and say:

(Where the applicant is a corporation, indicate office and authority of deponent.)

1. I am a member or a creditor of the above-named co-operative.
2. I require the list (or require to make a list) of the members (security holders) of the above-named co-operative.
3. I require the list of members (security holders) only for purposes connected with the above-named co-operative.
4. The list of members (security holders) and the information contained therein will be used only for purposes connected with the above-named co-operative.

SWORN, etc.

(3) Where the applicant is a corporation, the affidavit shall be made by the president or other officer authorized by resolution ^{Idem, where applicant a corporation} of the board of directors of the corporation.

(4) No person shall use a list of all or any of the members ^{Use of list} of a co-operative obtained under this section,

- (a) for the purpose of delivering or sending to all or any of the members advertising or other printed matter relating to securities other than the securities of the co-operative; or
- (b) for any purpose not connected with the co-operative.

(5) Every co-operative or transfer agent shall furnish a list ^{Duty to furnish} in accordance with subsection 1 when so required.

Purposes
of list

(6) Purposes connected with the co-operative include any effort to influence the voting of members or security holders at any meeting thereof.

Trafficking
in lists

121. No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the members of a co-operative.

Power of
court to
correct

122.—(1) Where the name of a person is, without sufficient cause, entered in or omitted from the records of a co-operative other than accounting records, or if default is made or unnecessary delay takes place in entering therein the fact of any person having ceased to be a security holder or member of the co-operative, the person aggrieved, or any security holder or member of the co-operative, or the co-operative itself, may apply to the court for an order that the records be rectified, and the court may dismiss such application or make an order for the rectification of the records and may direct the co-operative to compensate the party aggrieved for any damage he has sustained.

Decision
as to title

(2) Any court may, in any proceeding under this section, decide any question relating to the entitlement of a person who is a party to the proceeding to have his name entered in or omitted from such records whether the question arises between two or more security holders or members or alleged security holders or members, or between any security holders or members or alleged security holders or members and the co-operative.

Trial of
issue

(3) The court may direct an issue to be tried.

Jurisdiction
of court not
affected

(4) This section does not deprive any court of any jurisdiction it otherwise has.

AUDITORS AND FINANCIAL STATEMENTS

Exemption
from audit
provisions

123.—(1) Where in a financial year all the members in a co-operative that,

- (a) has fifteen or fewer members;
- (b) has capital not exceeding \$15,000 as shown on the financial statement of the co-operative for the preceding year; and
- (c) has assets not exceeding \$50,000 and sales or gross operating revenues not exceeding \$100,000, as shown on the financial statement of the co-operative for the preceding year,

consent in writing, the co-operative is exempt from sections 124 and 125, subsections 1 and 2 of section 126, section 127 and clause *b* of subsection 1 and subsection 3 of section 128 in respect of the financial year in which the consent is given.

(2) For the purposes of this section, capital shall be computed by adding together the sums represented by the amounts of, <sup>Interpre-
tation
of capital</sup>

- (a) member and patronage loans made to the co-operative that are outstanding;
- (b) issued capital determined in accordance with section 29;
- (c) unsecured long-term debt; and
- (d) surplus,

as shown on the financial statement of the co-operative for the preceding year.

124.—(1) The members of a co-operative at their first ^{Auditors} general meeting shall appoint one or more auditors to hold office until the close of the first annual meeting and, if the members fail to do so, the directors shall forthwith make such appointment or appointments.

(2) The members shall at each annual meeting appoint one ^{Idem} or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

(3) The directors may fill any casual vacancy in the office <sup>Casual
vacancy</sup> of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

(4) The members may, by resolution passed by a majority <sup>Removal of
auditor</sup> of the votes cast at a general meeting duly called for the purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term.

(5) Before calling a general meeting for the purpose speci- <sup>Notice to
auditor</sup> fied in subsection 4, the co-operative shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor,

- (a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and
- (b) a copy of all material proposed to be sent to members in connection with the meeting.

Right of
auditor to
make repre-
sentations

(6) An auditor has the right to make to the co-operative, three days or more before the mailing of the notice of the meeting, representations in writing, concerning,

- (a) his proposed removal as auditor;
- (b) the appointment or election of another person to fill the office of auditor; or
- (c) his resignation as auditor,

and the co-operative, at its expense, shall forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting.

Remuner-
ation

(7) The remuneration of an auditor appointed by the members shall be fixed by the members, or by the directors if they are authorized so to do by the members, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

Appointment
by court

(8) If for any reason no auditor is appointed, the court may, on the application of a member, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the co-operative for his or their services.

Notice of
appointment

(9) The co-operative shall give notice in writing to an auditor of his appointment forthwith after the appointment is made.

Notice to
auditor of
proposal to
appoint
another

125.—(1) If, at an annual meeting of members, it is proposed to appoint an auditor, other than the incumbent auditor, the co-operative shall, fifteen days or more before the mailing of the notice of meeting, give to the incumbent auditor a written notice of management's intention not to recommend his re-appointment at the annual meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed.

Right of
incumbent
auditor to
make rep-
resentations

(2) The incumbent auditor has the right to make to the co-operative, three days or more before the mailing of the notice of the meeting, representations in writing concerning the proposal not to reappoint him as auditor, and the co-operative,

at its expense, shall forward with the notice of the meeting a copy of such representations to each member entitled to receive notice of the meeting.

126.—(1) No person shall be appointed or act as auditor of a co-operative who is a director, officer or employee, or who has been, during the two years immediately preceding the proposed date of his appointment as auditor, a director, officer or employee of the co-operative or who is a partner, employer or employee of such director, officer or employee or who is a related person to any director or officer of the co-operative. Persons disqualified as auditors

(2) No person shall be appointed to act as auditor of a co-operative if he or any partner or employer of or related person to him transacts a material amount of business with the co-operative. Idem

(3) No person shall be appointed a receiver or a receiver and manager or liquidator of any co-operative of which he or any partner or employer of or a related person to him is the auditor or has been auditor within the two years preceding his appointment as receiver or receiver and manager or liquidator. Auditors not to be appointed receivers, etc.

(4) No person who is appointed a trustee of the estate of a co-operative under the *Bankruptcy Act* (Canada) or any partner or employer of or a related person to him shall be appointed or act as auditor of the co-operative. Trustee in bankruptcy not to be auditor
R.S.C. 1970, c. B-3

127.—(1) The auditor shall make such examination as will enable him to report to the members as required by subsection 2. Annual audit

(2) The auditor shall make a report to the members on the financial statement, other than the part thereof that relates to the period referred to in subclause ii of clause *a* of subsection 1 of section 128, to be laid before the co-operative at any annual meeting during his term of office and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the co-operative and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any. Auditor's report

(3) Where the report under subsection 2 does not contain the unqualified opinion required thereby, the auditor shall state in his report the reasons therefor. Idem

(4) Where facts come to the attention of the officers or directors, Facts discovered after statement

- (a) which could reasonably have been determined prior to the date of the last annual meeting of the members ; and
- (b) which if known prior to the date of the last annual meeting of members, would have required a material adjustment to the financial statement presented to the meeting,

the officers or directors shall communicate such facts to the auditor who reported to the members under this section and the directors shall forthwith amend the financial statement and send it to the auditor.

Amendment
of auditor's
report

(5) On the receipt of facts furnished under subsection 4 or from any other source, the auditor shall, if in his opinion it is necessary, amend his report in respect of the financial statement in accordance with subsection 3 and the directors or, if they fail to do so within a reasonable time, the auditor shall mail such amended report to the members.

Idem

(6) If the financial statement contains a statement of changes in net assets or a statement of source and application of funds, the auditor shall include in his report a statement whether in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein.

Idem

(7) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a co-operative are included in the financial statement of the co-operative, the report of the auditor of the co-operative required by subsection 2 may refer to the reports of auditors of one or more of such subsidiaries, but such reference shall not derogate from the duty of the auditor of the co-operative to comply with subsection 2.

Idem

(8) The auditor in his report shall make such statements as he considers necessary,

- (a) if the co-operative's financial statement is not in agreement with its accounting records ;
- (b) if the co-operative's financial statement is not in accordance with the requirements of this Act ;
- (c) if he has not received all the information and explanations that he has required ; or
- (d) if proper accounting records have not been kept, so far as appears from his examination.

(9) The auditor of a co-operative has right of access at all times to all records, documents, accounts and vouchers of the co-operative and is entitled to require from the directors, officers and employees of the co-operative such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. Right of access, etc.

(10) The auditor of a co-operative has right of access at all times to all records, documents, accounts and vouchers of all subsidiaries of the co-operative and is entitled to require from the directors, officers and employees of each such subsidiary such information and explanation as in his opinion are necessary to enable him to report as required by subsection 2. Idem

(11) Where a subsidiary referred to in subsection 10 is a corporation to which this Act does not apply, the co-operative shall make available to its auditor the records, documents, accounts and vouchers of that subsidiary and shall require the directors, officers and employees of that subsidiary to make available to its auditor the information and explanation required by subsection 10. Idem

(12) The auditor of a co-operative is entitled to attend any meeting of members of the co-operative and to receive all notices and other communications relating to any such meeting that a member is entitled to receive, and to be heard at any such meeting that he attends on any part of the business of the meeting that concerns him as auditor. Auditor may attend members' meetings

(13) Any member of a co-operative, whether or not he is entitled to vote at meetings of members, may, by notice in writing to the co-operative given five days or more before any meeting of members, require the attendance of the auditor at such meeting at the co-operative's expense, and in such event the auditor shall attend the meeting. Member may require auditor's attendance at members' meeting

(14) At any meeting of members, the auditor, if present, shall answer inquiries directed to him concerning the bases upon which he formed the opinion stated in the report made under subsection 2. Auditors must answer inquiries

128.—(1) The directors shall lay before each annual meeting of members, Information to be laid before annual meeting

(a) a comparative financial statement relating separately to,

(i) the period that commenced on the date of incorporation and ended not more than six months before the annual meeting or, if the

co-operative has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, and

- (ii) the period covered by the financial year next preceding such latest completed financial year, if any,

made up of,

- (iii) a statement of profit and loss for each period,
- (iv) a statement of surplus for each period,
- (v) a statement of patronage returns allocated to members during the year,
- (vi) a statement of source and application of funds for each period, and
- (vii) a balance sheet as at the end of each period;

(b) the report of the auditor to the members; and

(c) such further information respecting the financial position of the co-operative as the articles or by-laws of the co-operative require.

Designation
of
statements

(2) It is not necessary to designate the statements referred to in subsection 1 as the statement of profit and loss, statement of surplus, statement of patronage returns, statement of source and application of funds and balance sheet.

Auditor's
report to
be read

(3) The report of the auditor to the members shall be read at the annual meeting and shall be open to inspection at the meeting by any member.

Statement
of profit
and loss

129.—(1) The statement of profit and loss to be laid before an annual meeting shall be drawn up so as to present fairly the results of the operations of the co-operative for the period covered by the statement and so as to distinguish severally at least,

- (a) sales or gross operating revenue;
- (b) the operating profit or loss before including or providing for other items of income or expense that are required to be shown separately;

- (c) income from investments in subsidiaries whose financial statements are not consolidated with those of the co-operative;
- (d) income from other investments;
- (e) non-recurring profits and losses of significant amount including profits or losses on the disposal of capital assets and other items of a special nature to the extent that they are not shown separately in the statement of earned surplus;
- (f) any provision for depreciation or for obsolescence or for depletion;
- (g) amounts written off for goodwill or amortization of any other intangible assets to the extent that they are not shown separately in the statement of earned surplus;
- (h) interest on indebtedness initially incurred for a term of more than one year, including amortization of debt discount or premium and expense; and
- (i) taxes on income imposed by any taxing authority,

and shall show the net profit or loss for the financial period.

(2) Notwithstanding subsection 1, items of the nature^{Idem} described in clauses *f* and *g* of subsection 1 may be shown by way of note to the statement of profit and loss.

130.—(1) The statement of surplus to be laid before an annual meeting shall be drawn up so as to present fairly the transactions reflected in the statement and shall show separately a statement of contributed surplus and a statement of earned surplus.^{Statement of surplus}

(2) The statement of contributed surplus shall be drawn up so as to include and distinguish at least the following items:^{Contributed surplus}

1. The balance of such surplus at the end of the preceding financial period.
2. The additions to and deductions from such surplus during the financial period including,
 - i. the amount of surplus arising from the issue of shares or the reorganization of the co-operative's issued capital, including *inter alia*,

- a. the amount of premiums received on the issue of shares at a premium,
 - b. the amount of surplus realized on the purchase of shares,
 - ii. donations of cash or other property by members, and
 - iii. the amount of membership fees.
 - 3. The balance of such surplus at the end of the financial period.
- (3) The statement of earned surplus shall be drawn up so as to distinguish at least the following items:

Earned
surplus

- 1. The balance of such surplus at the end of the preceding financial period.
- 2. The additions to and deductions from such surplus during the financial period and without restricting the generality of the foregoing at least the following:
 - i. The amount of the net profit or loss for the financial period.
 - ii. The amount of dividends declared on each class of shares.
 - iii. The amount of patronage returns allocated to members.
 - iv. The amount transferred to or from reserves.
- 3. The balance of such surplus at the end of the financial period.

Treatment
of patronage
returns

131. Where a co-operative allocates patronage returns, the statement referred to in subclause v of clause *a* of subsection 1 of section 128 shall be drawn up to distinguish patronage returns according to services or products or groups of products acquired, marketed, handled, dealt in or sold or rendered by the customer or by the co-operative and such statement shall be so drawn as to present fairly the information shown therein for the period and show separately for members and non-members the amount of patronage returns allocated to each service, product or groups of products.

132. The statement of source and application of funds referred to in subclause vi of clause *b* of subsection 1 of section 128 shall be drawn up so as to present fairly the information shown therein for the period, and shall show separately at least,

- (a) funds derived from,
 - (i) current operations,
 - (ii) sale of non-current assets, segregating investments, fixed assets and intangible assets,
 - (iii) issue of debt obligations, including member loans, or other indebtedness maturing more than one year after issue,
 - (iv) issue of shares,
 - (v) membership fees; and
- (b) funds applied to,
 - (i) purchase of non-current assets, segregating investments, fixed assets and intangible assets,
 - (ii) redemption or other retirement of debt obligations or repayment of other indebtedness maturing more than one year after issue,
 - (iii) redemption or other retirement of shares,
 - (iv) payment of dividends,
 - (v) repayment of patronage loans,
 - (vi) payment of cash patronage returns, and
 - (vii) repayment of member loans.

133.—(1) The balance sheet to be laid before an annual meeting shall be drawn up so as to present fairly the financial position of the co-operative as at the date to which it is made up and so as to distinguish severally at least the following:

1. Cash.
2. Debts owing to the co-operative from its directors, officers or members, except debts of reasonable amount

arising in the ordinary course of its business that are not overdue having regard to its ordinary terms of credit.

3. Debts owing to the co-operative, whether on account of a loan or otherwise, from subsidiaries whose financial statements are not consolidated with those of the co-operative.
4. Other debts owing to the co-operative segregating those that arose otherwise than in the ordinary course of its business.
5. Inventory, stating the basis of valuation.
6. Shares, bonds, debentures and other investments owned by the co-operative, except those referred to in paragraph 7, stating their nature and the basis of their valuation and showing separately those that are marketable with a notation of their market value.
7. Securities of subsidiaries whose financial statements are not consolidated with those of the co-operative, stating the basis of valuation.
8. Lands, buildings and plant and equipment, stating the basis of valuation, whether cost or otherwise, and, if valued on the basis of an appraisal, the date of appraisal, the name of the appraiser, the basis of the appraisal value and, if such appraisal took place within five years preceding the date to which the balance sheet is made up, the disposition in the accounts of the co-operative of any amounts added to or deducted from such assets on appraisal and also the amount or amounts accumulated in respect of depreciation, obsolescence and depletion.
9. There shall be stated under separate headings, in so far as they are not written off,
 - i. expenditures on account of future business,
 - ii. any expense incurred in connection with any issue of shares,
 - iii. any expense incurred in connection with any issue of debt obligations, including any discount thereon, and
 - iv. any one or more of the following: goodwill, franchises, patents, copyrights, trade marks

and other intangible assets and the amount, if any, by which the value of any such assets has been written up within a period of five years preceding the date to which the balance sheet is made up.

10. Bank loans and overdrafts.
11. Debts owing by the co-operative, except those referred to in paragraphs 12 and 13, on loans from its directors, officers or members.
12. Debts owing by the co-operative on loans from members, called "member loans" referred to in section 49.
13. Debts owing by the co-operative to members on the compulsory loans of patronage returns referred to in subsection 4 of section 56.
14. Debts owing by the co-operative to subsidiaries whose financial statements are not consolidated with those of the co-operative, whether on account of a loan or otherwise.
15. Other debts owing by the co-operative, segregating those that arose otherwise than in the ordinary course of its business.
16. Liability for taxes, including the estimated liability for taxes in respect of the income of the period covered by the statement of profit and loss.
17. Dividends declared but not paid.
18. Deferred income.
19. Debt obligations issued by the co-operative, stating the interest rate, the maturity date, the amount outstanding and the existence of sinking fund, redemption requirements and conversion rights, if any.
20. The authorized capital, giving the number of each class of shares and a brief description of each such class, and indicating therein any class of shares that is redeemable and the redemption price thereof.
21. The issued capital, giving the number of shares of each class issued and outstanding and the amount

received therefor that is attributable to capital, and showing,

- i. the number of shares of each class issued since the date of the last preceding balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration, and
 - ii. where any shares issued before this Act comes into force have not been fully paid,
 - a. the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and
 - b. the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid.
22. Contributed surplus.
 23. Earned surplus.
 24. Reserves, showing the amounts added thereto and the amounts deducted therefrom during the financial period.
 25. The aggregate number of shares of the co-operative purchased and resold since the date of the last preceding balance sheet.

Notes

(2) Explanatory information or particulars of any item mentioned in subsection 1 may be shown by way of note to the balance sheet.

Notes to
financial
statement

134.—(1) There shall be stated by way of note to the financial statement particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of any of the statements with any of those for the preceding period, and the effect, if material, of any such change upon the profit or loss for the period.

Change in
accounting
practice

(2) For the purpose of subsection 1, a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a state-

ment with that for the preceding period, even though such change did not have a material effect upon the profit or loss for the period.

(3) Where applicable, the following matters shall be referred ^{Idem} to in the financial statement or by way of note thereto:

1. The basis of conversion of amounts from currencies other than the currency in which the financial statement is expressed.
2. Foreign currency restrictions that affect the assets of the co-operative.
3. Contractual obligations that will require abnormal expenditures in relation to the co-operative's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts.
4. Material contractual obligations in respect of long-term leases, including, in the year in which the transaction was effected, the principal details of any sale and lease transaction.
5. Contingent liabilities, stating their nature and, where practicable, the approximate amounts involved.
6. Any liability secured otherwise than by operation of law on any asset of the co-operative, stating the liability so secured.
7. Any default of the co-operative in principal, interest, sinking fund or redemption provisions with respect to any issue of its debt obligations or credit agreements.
8. The gross amount of arrears of dividends on any class of shares and the date to which such dividends were last paid.
9. Where a co-operative has contracted to issue shares or has given an option to purchase shares, the class and number of shares affected, the price and the date for issue of the shares or exercise of the option.
10. Where a co-operative has contracted to purchase or resell common shares, the number of shares affected and price and date for the purchase or resale.

11. The aggregate direct remuneration paid or payable by the co-operative and its subsidiaries whose financial statements are consolidated with those of the co-operative to the directors and the senior officers and, as a separate amount, the aggregate direct remuneration paid or payable to such directors and senior officers by the subsidiaries of the co-operative whose financial statements are not consolidated with those of the co-operative. *
12. In the case of a co-operative with subsidiaries, the aggregate of any shares in, and the aggregate of any debt obligations of, that co-operative held by a subsidiary corporation whose financial statements are not consolidated with those of the co-operative.
13. The amount of any loans by the co-operative, or by a subsidiary corporation, otherwise than in the ordinary course of business, during the co-operative's financial period, to the directors or officers of the co-operative.
14. Any restriction by the articles or by-laws of the co-operative or by contract on the payment of dividends that is significant in the light of the co-operative's financial position.
15. Any event or transaction, other than one in the normal course of business operations, between the date to which the financial statement is made up and the date of the auditor's report thereon that materially affects the financial statement.
16. The amount of any obligation for pension benefits arising from service before the date of the balance sheet, whether or not such obligation has been provided for in the accounts of the co-operative, the manner in which the co-operative proposes to satisfy such obligation and the basis on which it has charged or proposes to charge the related costs against operations.
17. Brief particulars of any action to which the co-operative is a party commenced under section 68 during the period.
18. In the case of a co-operative that transacts business with non-members,
 - (i) where the amount of business transacted with non-members exceeds 20 per cent, a statement setting out the percentage of such business, or

- (ii) where the amount of business transacted with non-members does not exceed 20 per cent, a statement to this effect.

(4) A note to a financial statement is a part of it.

Idem

(5) In this section, "senior officer" does not include each of the five highest paid employees of a co-operative.

Interpretation of senior officer

135.—(1) A co-operative, in this section referred to as "the holding co-operative", may include in the financial statement to be submitted at an annual meeting the assets and liabilities and income and expense of any one or more of its subsidiaries, making due provision for minority interests, if any, and indicating in such financial statement that it is presented in consolidated form.

Consolidated financial statement

(2) Where the assets and liabilities and income and expense of any one or more subsidiaries of the holding co-operative are not so included in the financial statement of the holding co-operative,

Non-consolidated financial statement

(a) the financial statement of the holding co-operative shall include a statement setting forth,

- (i) the reason why the assets and liabilities and income and expense of such subsidiary or subsidiaries are not included in the financial statement of the holding co-operative,
- (ii) if there is only one such subsidiary, the amount of the holding co-operative's proportion of the profit or loss of the subsidiary for the financial period coinciding with or ending in the financial period of the holding co-operative, or, if there is more than one such subsidiary, the amount of the holding co-operative's proportion of the aggregate profits less losses, or losses less profits, of all the subsidiaries for the respective financial periods coinciding with or ending in the financial period of the holding co-operative,
- (iii) the amount included as income from such subsidiary or subsidiaries in the statement of profit and loss of the holding co-operative and the amount included therein as a provision for the loss or losses of the subsidiary or subsidiaries,

- (iv) if there is only one such subsidiary, the amount of the holding co-operative's proportion of the undistributed profits of the subsidiary earned since the acquisition of the shares of the subsidiary by the holding co-operative to the extent that such amount has not been taken into the accounts of the holding co-operative, or, if there is more than one such subsidiary, the amount of the holding co-operative's proportion of the aggregate undistributed profits of all the subsidiaries earned since the acquisition of their shares by the holding co-operative less its proportion of the losses, if any, suffered by any subsidiary since the acquisition of its shares to the extent that such amount has not been taken into the accounts of the holding co-operative,
 - (v) any qualifications contained in the report of the auditor of any such subsidiary on its financial statement for the financial period ending as aforesaid, and any note or reference contained in that financial statement to call attention to a matter that, apart from the note or reference, would properly have been referred to in such a qualification, in so far as the matter that is the subject of the qualification or note is not provided for by the co-operative's own financial statement and is material from the point of view of its members;
- (b) if for any reason the directors of the holding co-operative are unable to obtain such information as is necessary for the preparation of the statement that is to be included in the financial statement of the holding co-operative, the directors who sign the financial statement shall so report in writing and their report shall be included in the financial statement in lieu of the statement;
- (c) if, in the opinion of the auditor of the holding co-operative, adequate provision has not been made in the financial statement of the holding co-operative for the holding co-operative's proportion,
- (i) where there is only one such subsidiary, of the loss of the subsidiary suffered since acquisition of its shares by the holding co-operative, or

- (ii) where there is more than one such subsidiary, of the aggregate losses suffered by the subsidiaries since acquisition of their shares by the holding co-operative in excess of its proportion of the undistributed profits, if any, earned by any of the subsidiaries since such acquisition,

the auditor shall state in his report the additional amount that in his opinion is necessary to make full provision therefor.

(3) Whether or not the assets and liabilities and income and expense of any one or more subsidiaries of a holding co-operative are included in the financial statement of the holding co-operative, true copies of the latest financial statement of the subsidiary or subsidiaries shall be kept on hand by the holding co-operative at its head office and shall be open to examination by the members of the holding co-operative on request during the normal business hours of the holding co-operative. Copies of subsidiary statement

136. Notwithstanding sections 129 to 135, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance. Insignificant circumstances

137. In a financial statement, the term “reserve” shall be used to describe only, Reserve

- (a) amounts appropriated from earned surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred;
- (b) amounts appropriated from earned surplus pursuant to the articles or by-laws of the co-operative for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred; and
- (c) amounts appropriated from earned surplus in accordance with the terms of a contract and that can be restored to the earned surplus when the conditions of the contract are fulfilled.

138.—(1) The directors of a co-operative may elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three Audit committee

directors, of whom a majority shall not be officers or employees of the co-operative to hold office until the next annual meeting of the members.

Chairman

(2) The members of the audit committee shall elect a chairman from among their number.

Review

(3) The co-operative shall submit the financial statement to the audit committee for its review and the financial statement shall thereafter be submitted to the board of directors.

Hearing
of auditor

(4) The auditor has the right to appear before and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

Idem

(5) Upon the request of the auditor, the chairman of the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or members.

Right of
auditor to
be heard

(6) The auditor of a co-operative shall be entitled to attend and be heard at meetings of the board of directors of the co-operative on matters relating to his duties as auditor.

Approval by
directors

139.—(1) The financial statement shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign and the auditor's report, unless the co-operative is exempt under section 123, shall be attached to or accompany the financial statement.

Rights of
auditor
where no
audit
committee

(2) The auditor of a co-operative that has not elected an audit committee for the year to which the financial statement relates, is entitled,

(a) to receive notice of and to attend the meeting of directors called to approve the financial statement under subsection 1; and

(b) to request a meeting of the board of directors of the co-operative to consider any matters the auditor believes should be brought to their attention, and upon his request, the president of the co-operative shall convene such a meeting.

Mailing of
financial
statement to
members

140. —(1) A co-operative shall, ten days or more before the date of the annual meeting of members, send by prepaid mail to each member at his latest address as shown

on the records of the co-operative a copy of the financial statement and, subject to section 123, a copy of the auditor's report.

(2) The directors of such co-operative shall send by prepaid ^{idem} mail to each such member a copy of any financial statement and auditor's report amended under subsections 4 and 5 of section 127.

141.—(1) A co-operative shall file with the Minister its financial statements and, subject to section 123, a copy of its auditor's report that are required to be mailed by the co-operative to its members. ^{Financial statements to be filed with Minister}

(2) The financial statements and auditor's report where ^{idem} required, shall be sent to the Minister on the same date such statements are mailed or required to be mailed by the co-operative to its members, whichever is the earlier.

MAINTENANCE OF CO-OPERATIVE STATUS

142.—(1) Upon the request of the Minister, every co-operative shall furnish to the Minister such information as he may require to enable him, ^{Information to be furnished to Minister}

- (a) to compile statistical records and information in such form as the Minister may require;
- (b) to facilitate the carrying on of research projects;
- (c) to establish that all persons to whom this Act applies are not in contravention of this Act; and
- (d) to establish that the business and affairs of the co-operative are being conducted on a co-operative basis.

(2) The Minister or any employee in the Ministry shall not disclose any information contained in a return made under subsection 1, except where that disclosure is necessary for the administration or enforcement of this Act or where the disclosure is required by a court for the purposes of an action, prosecution or other proceeding. ^{Information not to be disclosed}

143. Where the Minister is of the opinion that the business and affairs of the co-operative are not being conducted on a co-operative basis, he may, after giving the co-operative an opportunity to be heard, issue a certificate of amendment changing the co-operative into a corporation subject to the provisions of *The Business Corporations Act* and where necessary for the purpose, changing the co-operative into a corporation with share capital. ^{Affairs not conducted on co-operative basis}

R.S.O. 1970,
c. 53

Limit to
non-member
business

144.—(1) Where the Minister is of the opinion that a co-operative has for a period of three years or longer, conducted 50 per cent or more of its business with non-members of that co-operative he may after giving the co-operative an opportunity to be heard, order that a certificate of amendment be issued changing the co-operative into a corporation that is subject to the provisions of *The Business Corporations Act* and, where necessary for the purpose, changing the co-operative into a corporation with share capital.

R.S.O. 1970,
c. 53

Idem

(2) For the purposes of subsection 1, the amount of business conducted by a co-operative with a non-member means the value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative, on behalf of or for the non-members expressed as a percentage of the total value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative from, on behalf of, or for all customers during the year.

Idem

(3) For the purposes of computing the amount of business under subsection 2, there shall not be included in the amount of business conducted with non-members, the value of goods or products acquired, marketed, handled, dealt in or sold or services rendered by the co-operative from, on behalf of or for non-members who are required to conduct business with the co-operative by a marketing plan established under an Act of the Legislature or of the Parliament of Canada.

Members
not to
number
fewer
than five

145.—(1) If a co-operative exercises its corporate powers when its members are fewer in number than five for a period of more than six months after the number has been so reduced, each person who was a member of the co-operative during the time that it so exercised its corporate powers after such period of six months and is aware of the fact that it so exercised its corporate powers is severally liable for the payment of the whole of the debts of the co-operative contracted during such time and may be sued for the debts without the joinder in the action of the co-operative or of any other member.

Saving

(2) A member who has become aware that the co-operative is so exercising its corporate powers may serve a protest in writing on the co-operative and may by registered letter notify the Minister of such protest having been served and of the facts upon which it is based, and such member may thereby and not otherwise, from the date of his protest and notification, exonerate himself from liability.

Notice and
penalty

(3) If after notice from the Minister the co-operative refuses or neglects to bring the number of its members up to five or more, such refusal or neglect may be regarded by the

Minister as sufficient cause for the cancellation of the certificate of incorporation or any certificate issued by him under this Act.

INVESTIGATIONS

146.—(1) Upon application by a member of a co-operative, the court, if satisfied that the application is made in good faith and that it is *prima facie* in the interests of the co-operative or the holders of its securities to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as to the court seems fit, appointing an inspector to investigate the affairs and management of the co-operative or any subsidiary of the co-operative, or both, and to audit the accounts and records of the co-operative or any affiliate thereof named in the order. Investigations and audits

(2) An order may be made under subsection 1 whether or not there has been disclosure to the members of the co-operative of information relating to any matter on the basis of which the order is made. Idem

(3) Every director, officer, agent, employee, banker and auditor of the co-operative or of any subsidiary of the co-operative named in the order and every other person shall produce for the examination of the inspector all accounts and records of or relating to the co-operative or subsidiary in their custody or control. Production of accounts and records

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the co-operative or subsidiary in relation to its affairs, management, accounts and records. Examination may be under oath

(5) The court may, on the application of the inspector, on such terms and conditions as it sees fit, order any person not mentioned in subsection 4 to attend and be examined under oath before the inspector on any matter relevant to the investigation or audit. Court order for examination

(6) Every director, officer, agent, employee, banker or auditor who refuses to produce any account or record referred to in subsection 3 and every person examined under subsection 4 or 5 who refuses to answer any question related to the affairs and management of the co-operative or any subsidiary is guilty of an offence under section 176, in addition to any other liability to which he is subject. Offences

(7) The inspector shall make a report to the court and shall forward a copy of the report to the co-operative and any Inspector's report

subsidiary of the co-operative named in the order and to the person who made the application under subsection 1.

Co-operative
may appoint
inspector
for same
purpose

147.—(1) A co-operative may, by resolution passed at an annual meeting of members or a general meeting of members called for that purpose, appoint an inspector to investigate its affairs and management.

Powers and
duties of
inspector

(2) The inspector appointed under subsection 1 has the same powers and shall perform the same duties as an inspector appointed under section 146 and he shall make his report in such manner and to such persons as the co-operative by resolution of the members directs.

Where
Minister
to appoint
inspector

148.—(1) Notwithstanding anything contained in section 146 or 147, the Minister shall appoint in writing an inspector to investigate and report on the affairs and management of a co-operative or its subsidiaries if 10 per cent of the members of the co-operative request in writing such investigation and show circumstances suggesting that,

- (a) the business of the co-operative or any of its subsidiaries is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the co-operative or any of its subsidiaries are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner oppressive or unfairly prejudicial to or in disregard of the interests of a security holder;
- (c) the co-operative or any of its subsidiaries was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the co-operative or any of its subsidiaries have in connection therewith acted fraudulently or dishonestly.

Idem

(2) The Minister may on his own initiative appoint in writing an inspector to investigate and report on the affairs and management of a co-operative or its subsidiaries if it appears that there exist any of the circumstances mentioned in clause *a*, *b*, *c* or *d* of subsection 1.

Production
of accounts
and records

(3) Every person shall produce for the examination of the inspector all accounts and records in their custody or control which relate to the co-operative or any of its subsidiaries.

(4) The inspector may examine upon oath any present or former director, officer, agent or employee of the co-operative or any of its subsidiaries in relation to its affairs, management, accounts and records. Examination may be under oath

(5) Upon an application to the court by the inspector, the court may, on such terms and conditions as it sees fit, order any person not mentioned in subsection 4 to attend and be examined under oath before the inspector on any matter relevant to the investigation. Court order for examination

(6) Every director, officer, agent, employee, banker or auditor who refuses to produce any account or record referred to in subsection 3 and every person examined under subsection 4 or 5 who refuses to answer any question related to the affairs and management of the co-operative or any of its subsidiaries is guilty of an offence under section 176 in addition to any other liability to which he is subject. Offences

(7) The inspector shall deliver the report of his investigation to the Minister and the Minister may forward a copy of the report to the co-operative and any subsidiary of the co-operative investigated. Report to be made to Minister

149. Where it appears from the report of an inspector made under section 146, 147 or 148 that any of the circumstances set out in clause *a*, *b*, *c* or *d* of subsection 1 of section 148 exist, the Minister may, notwithstanding any other remedies available, Remedies

- (a) apply under clause *d* of section 217 of *The Business Corporations Act* to wind up the co-operative by order of the court; R.S.O. 1970, c. 53
- (b) cancel the certificate of incorporation for cause under section 166;
- (c) require, or apply to the court for an order under section 78 requiring, the directors of the co-operative to call a general meeting of members; or
- (d) refer the report of the inspector to the Attorney General.

150. A copy of the report of an inspector appointed under this Act authenticated by the registrar of the court or in the case of an investigation under section 147 or 148 by the inspector is admissible in any legal proceeding and is evidence of the opinion of the inspector in relation to any matter contained in the report. Report admissible in proceedings

REORGANIZATION

Amendment of Articles

Amendments **151.**—(1) A co-operative may, from time to time, amend its articles of incorporation to,

- (a) change its name;
- (b) extend, limit or otherwise vary its objects;
- (c) increase its authorized capital;
- (d) decrease its authorized capital by cancelling shares whether issued or unissued or by reducing the par value of issued or unissued shares;
- (e) increase or decrease the membership fee;
- (f) increase or decrease the minimum amount of member loans;
- (g) redivide its authorized capital into shares of lesser or greater par value;
- (h) redesignate any class of shares;
- (i) reclassify any shares into shares of a different class;
- (j) delete or vary any provision in its articles;
- (k) provide for any other matter or thing that is authorized by this Act to be set out in the articles or that could be the subject of a by-law of the co-operative;
- (l) convert it into a co-operative with or without share capital;
- (m) convert it into a corporation to which *The Business Corporations Act* applies.

R.S.O. 1970,
c. 53

Authoriza-
tion

(2) An amendment under subsection 1, except clauses *l* and *m*, shall be authorized by a special resolution.

Idem

(3) Subject to section 152, an amendment under clause *l* or *m* of subsection 1 shall be authorized by a resolution of the board of directors and confirmed by at least three-quarters of the votes cast at a general meeting of the members of the co-operative duly called for that purpose.

(4) If the amendment is to delete or vary a preference, right, condition, restriction, limitation or prohibition attaching to a class of preference shares or to create preference shares, ranking in any respect in priority to or on a parity with an existing class of preference shares, then, in addition to the confirmation required by subsection 2, the resolution is not effective until it has been confirmed,

Additional
authorization
for
variation of
rights of
preference
shares

- (a) by 100 per cent of the holders of the shares of such class or classes of shares in writing; or
- (b) in writing by at least 95 per cent of the holders of the shares of such class or classes of shares holding at least 95 per cent of the issued shares of such class or classes and after twenty-one days notice of the resolution and confirmation has been given by sending the notice to each of the holders of shares of such class or classes to his latest address as shown on the records of the co-operative and only if at the expiration of twenty-one days none of the holders of such class or classes has dissented in writing to the co-operative; or
- (c) if the articles so provide, by at least two-thirds of the votes cast at a meeting of the holders of such class or classes of shares duly called for that purpose or such greater proportion of the votes cast as the articles provide,

and by such additional authorization as the articles provide.

152.—(1) Notwithstanding subsection 3 of section 151, where a co-operative is no longer able to conduct its business and affairs on a co-operative basis by reason of the provisions of an Act of the Legislature or of the Parliament of Canada, the co-operative may apply to the Minister for a certificate of amendment converting the co-operative to a corporation to which *The Business Corporations Act* applies and, where necessary, for the purpose, changing the co-operative into a corporation with share capital.

Conversion
of co-
operative to
corporation

R.S.O. 1970,
c. 53

(2) An application under subsection 1 shall be authorized by special resolution.

Authoriza-
tion

153.—(1) For the purpose of bringing an amendment to the articles into effect, the co-operative shall deliver to the Minister, within six months after the resolution has become effective, articles of amendment in duplicate, executed under the seal of the co-operative and signed by two officers, or by

Articles of
amendment

one director and one officer, of the co-operative and verified by affidavit of one of the officers or directors signing the articles of amendment, setting out,

- (a) the name of the co-operative;
- (b) a certified copy of the resolution;
- (c) that the amendment has been duly authorized as required by subsections 2, 3 and 4 of section 151; and
- (d) the date of the confirmation of the resolution by the members.

Change
of name

(2) Where the articles of amendment are to change the name of the co-operative, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the co-operative is not insolvent.

Decrease
of capital

(3) Where the articles of amendment are to decrease the authorized capital, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister that the co-operative is not insolvent and that the decrease will not render the co-operative insolvent, and, if required by the Minister, by evidence that establishes to his satisfaction that no creditors object to the amendment.

Pro forma
balance
sheet

(4) Where the articles of amendment are to make any change in the authorized capital, the articles of amendment shall, if required by the Minister, be accompanied by a *pro forma* balance sheet after giving effect to the proposed change.

Certificate of
amendment

154.—(1) If the articles of amendment conform to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles of amendment the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the co-operative or its agent a certificate of amendment to which he shall affix the other duplicate.

Effect of
certificate

(2) The amendment becomes effective upon the date set forth in the certificate of amendment and the articles of incorporation are amended accordingly.

Restatement of Articles

155.—(1) A co-operative may at any time restate its ^{Restatement of articles} articles of incorporation as theretofore amended.

(2) For the purposes of bringing the restated articles into effect, the co-operative shall deliver to the Minister the restated ^{Filing of restatement} articles in duplicate, executed under the seal of the co-operative and signed by two officers, or by one director and one officer, of the co-operative and verified by affidavit of one of the officers or directors signing the restated articles, setting out,

- (a) all the provisions that are then set out in the original articles of incorporation as theretofore amended; and
- (b) a statement that the restated articles correctly set out without change the corresponding provisions of the original articles as theretofore amended.

(3) If the restated articles of incorporation conform to law, ^{Certificate of restatement} the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the restated articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the co-operative or its agent a restated certificate of incorporation to which he shall affix the other duplicate.

(4) The restated articles of incorporation become effective ^{Effect of certificate} upon the date set forth in the restated certificate and supersede the original articles of incorporation and all amendments thereto.

(5) Where a certificate of restatement is issued to a co-operative incorporated by special Act, the co-operative is continued as if it had been incorporated under this Act and the special Act ceases to apply ^{Where special Act ceases to apply}.

Amalgamations and Continuations

156.—(1) Any two or more co-operatives may amalgamate ^{Amalgamation} and continue as one co-operative.

(2) The co-operatives proposing to amalgamate shall enter ^{Agreement} into an agreement for the amalgamation, prescribing its terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect, and, in particular the agreement shall set out, as may be applicable,

- (a) the name of the amalgamated co-operative;

- (b) the objects of the amalgamated co-operative;
- (c) the place in Ontario where the head office of the amalgamated co-operative is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district, and giving the street and number, if any;
- (d) the authorized capital of the amalgamated co-operative, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share;
- (e) where there are to be preference shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions applying to them or each class of them;
- (f) the restrictions, if any, to be placed on the transfer of member loans or of its shares or any class thereof of the amalgamated co-operative;
- (g) the authorized loan capital of the amalgamated co-operative;
- (h) the amount of membership fee and the classes of membership, if any, setting forth the designation of and the terms and conditions attaching to each class of membership in the amalgamated co-operative;
- (i) the names in full and the residence address, giving the street and number, if any, of each person who is to be a first director of the amalgamated co-operative;
- (j) the time and manner of election of the subsequent directors of the amalgamated co-operative;
- (k) whether or not the by-laws of the amalgamated co-operative are to be those of one of the amalgamating co-operatives, and, if not, a copy of the proposed by-laws of the amalgamated co-operative;
- (l) the manner in which the issued shares of each of the amalgamating co-operatives are to be converted into issued shares of the amalgamated co-operative;
- (m) the manner of conversion of the loan and share capital, as the case may be, of the amalgamating

co-operatives into the loan and share capital, as the case may be, of the amalgamated co-operative;

- (n) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated co-operative;

(3) Where shares of one of the amalgamating co-operatives are held by or on behalf of another of the amalgamating co-operatives, the amalgamation agreement shall provide for the cancellation of such shares upon the amalgamation becoming effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated co-operative. Shares of amalgamating co-operative held by another

(4) The member or patronage loans, if any, of the amalgamating co-operatives shall represent liabilities of the amalgamated co-operative. Treatment of patronage loans

(5) An amalgamation agreement is not effective until approved by a special resolution of each of the amalgamating co-operatives. Approval of agreement

(6) Where the carrying out of the amalgamation agreement would result in the deletion or variation of a preference, right, condition, restriction, limitation or prohibition attaching to a class of issued preference shares of any of the amalgamating co-operatives or in the creation of preference shares of the amalgamated co-operative ranking in any respect in priority to, or on a parity with, any existing class of preference shares of any of the amalgamating co-operatives, the agreement is not effective until it is approved in the manner provided by subsection 4 of section 151 in addition to the approval required by subsection 4. Approval by preference shareholders

157.—(1) For the purpose of bringing an amalgamation into effect, the amalgamating co-operatives shall, within six months after the amalgamation agreement has become effective, deliver to the Minister articles of amalgamation in duplicate executed under the seal of each of the amalgamating co-operatives and signed by two officers, or by one director and one officer, of each of the amalgamating co-operatives and verified by affidavit of one of the officers or directors signing the articles of amalgamation for each amalgamating co-operative, setting out, Filing of articles of amalgamation

- (a) the names of each of the amalgamating co-operatives;

- (b) a certified copy of the amalgamation agreement;
- (c) that the agreement has been duly approved as required by section 156; and
- (d) the dates on which the amalgamation agreement was approved by the members of each of the amalgamating co-operatives.

Evidence of
solvency

(2) The articles of amalgamation shall be accompanied by evidence that establishes to the satisfaction of the Minister that each of the amalgamating co-operatives is not insolvent and, if required by the Minister, a *pro forma* balance sheet after giving effect to the proposed amalgamation.

Issuance of
certificate of
amalgama-
tion

(3) If the articles of amalgamation conform to law, the Minister shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the amalgamated co-operative or its agent a certificate of amalgamation to which he shall affix the other duplicate.

Effect of
certificate

(4) Upon the date set forth in the certificate of amalgamation,

- (a) the amalgamation becomes effective and the amalgamating co-operatives are amalgamated and continue as one co-operative under the terms and conditions prescribed in the amalgamation agreement;
- (b) the amalgamated co-operative possesses all the property, rights, privileges and franchises and is subject to all liabilities, contracts, disabilities and debts of each of the amalgamating co-operatives;
- (c) the issued capital of the amalgamated co-operative is, subject to the decrease provided for in subsection 3 of section 156, equal to the aggregate of the issued capital of each of the amalgamating co-operatives immediately before the amalgamation becomes effective; and
- (d) the articles of incorporation of each of the amalgamating co-operatives are amended to the extent

necessary to give effect to the terms and conditions of the amalgamation agreement.

158.—(1) A corporation incorporated under the laws of any jurisdiction other than Ontario may, if it appears to the Minister to be thereunto authorized by the laws of the jurisdiction in which it was incorporated, apply to the Minister for a certificate continuing it as if it had been incorporated under this Act, and the Minister may issue the certificate of continuation on application supported by such material as appears satisfactory, and the certificate may be issued on such terms and subject to such limitations and conditions and contain such provisions as appear to the Minister to be fit and proper.

Certificate of continuation

(2) Upon the date set forth in a certificate of continuation issued under subsection 1, this Act applies to the corporation to the same extent as if it had been incorporated under this Act.

Effect of certificate

159.—(1) A co-operative may, if authorized by a special resolution, by the Minister and by the laws of any other jurisdiction, apply to the proper officer of that other jurisdiction for an instrument of continuation continuing the co-operative as if it had been incorporated under the laws of that other jurisdiction.

Transfer of Ontario co-operative

(2) This Act ceases to apply to the co-operative on and after the date on which the co-operative is continued under the laws of the other jurisdiction and the co-operative shall file with the Minister a copy of the instrument of continuation certified by the proper officer of the other jurisdiction authorized to certify such documents.

Notice

(3) This section applies only in respect of a jurisdiction that has legislation in force that permits corporations incorporated under its laws to apply for an instrument of continuation under the laws of Ontario.

Application

160. All rights of creditors against the property, rights and assets of a co-operative amalgamated under section 156 or continued under section 158 and all liens upon its property, rights and assets are unimpaired by such amalgamation or continuation, and all debts, contracts, liabilities and duties of the co-operative thenceforth attach to the amalgamated or continued co-operative and may be enforced against it.

Rights of creditors preserved

DISSOLUTION

161. Sections 201 to 246, except clause *a* of subsection 1 of section 231, of *The Business Corporations Act* apply, *mutatis mutandis*, to co-operatives, and for the purpose a reference

Winding up
R.S.O. 1970,
c. 53

therein to a corporation shall be deemed to be a reference to a co-operative and a reference therein to a shareholder shall be deemed to be a reference to a member.

Distribution
of property

162.—(1) On any distribution of the property of a co-operative, member loans and patronage returns that are lent to the co-operative rank after the ordinary debts.

Distribution
of property
upon
dissolution

(2) The articles of a co-operative may provide that, upon the dissolution of the co-operative and after the payment of all debts and liabilities, including any declared and unpaid dividends and the amount paid up on outstanding shares, if any, the remaining property of the co-operative or any part thereof may be distributed or disposed of,

- (a) equally among the members irrespective of the number of shares or amount of loans, if any, held or made by a member ;
- (b) among the members at the time of dissolution on the basis of patronage returns accrued to such members during the five fiscal years immediately preceding the dissolution or after the date of incorporation ; or
- (c) to charitable organizations.

Idem

(3) In the absence of any provisions in the articles or by-laws, upon the dissolution of the co-operative, the whole of its remaining property shall be distributed equally among the members irrespective of the number of shares or amount of loans, if any, held or made by a member.

Voluntary
dissolution

163. A co-operative may be dissolved upon the authorization of,

- (a) a majority of the votes cast at a general meeting of the members of the co-operative duly called for the purpose or by such other proportion of the votes cast as the articles provide, but such other proportion shall not be less than 50 per cent of all the members entitled to vote at the meeting ;
- (b) the consent in writing of all the members entitled to vote at such meeting ; or
- (c) all its incorporators or their personal representatives at any time within two years after the date set forth in its certificate of incorporation where the co-operative has not commenced business and has not issued any shares or received any membership fees or loans.

Articles of
dissolution
where
co-operative
active

164.—(1) For the purpose of bringing the dissolution authorized under clause *a* or *b* of section 163 into effect, the co-operative shall deliver to the Minister within one year

after the authorization, articles of dissolution in duplicate, executed under the seal of the co-operative and signed by two officers or by one director and one officer, of the co-operative and verified by affidavit of one of the officers or directors signing the articles of dissolution, setting out,

- (a) the name of the co-operative;
- (b) that its dissolution has been duly authorized under clause *a* or *b* of section 163;
- (c) that it has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection 3 or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;
- (d) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute among its members or that it has distributed its remaining property in accordance with section 162 or in accordance with subsection 4 where applicable;
- (e) that there are no proceedings pending in any court against it; and
- (f) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its principal place of business in Ontario or, if it does not have a place of business in Ontario, where it has its head office.

(2) For the purpose of bringing a dissolution authorized under clause *c* of section 163 into effect, the co-operative shall deliver to the Minister articles of dissolution in duplicate, signed by all its incorporators or their personal representatives and verified by affidavit of one of them setting out,

Articles of
dissolution
where co-
operative
never active

- (a) the name of the co-operative;
- (b) the date set forth in its certificate of incorporation;
- (c) that the co-operative has not commenced business;
- (d) that none of its shares has been issued;
- (e) that no membership fees or loans have been received;

- (f) that dissolution has been duly authorized under clause c of section 163;
- (g) that it has no debts, obligations or liabilities;
- (h) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute or that it has distributed its remaining property to the persons entitled thereto;
- (i) that there are no proceedings pending in any court against it; and
- (j) that it has given notice of its intention to dissolve by publication once in *The Ontario Gazette* and once in a newspaper having general circulation in the place where it has its head office.

Where
creditor
unknown

(3) Where a co-operative authorizes its dissolution and a creditor is unknown or his whereabouts is unknown, the co-operative may, by agreement with the Public Trustee, pay to the Public Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and such payment shall be deemed to be due provision for the debt for the purposes of clause c of subsection 1.

Where
member or
shareholder
unknown

(4) Where a co-operative authorizes its dissolution and a member is unknown or his whereabouts is unknown, it may, by agreement with the Public Trustee, deliver or convey his share of the property to the Public Trustee to be held in trust for him, and such delivery or conveyance shall be deemed to be a distribution to that member for the purposes of the dissolution.

Power to
consent

(5) If the property delivered or conveyed to the Public Trustee under subsection 4 is in a form other than cash, the Public Trustee may at any time, and within ten years after such delivery or conveyance shall, convert it into cash.

Payment
to person
entitled

(6) If the amount paid under subsection 3 or the property delivered or conveyed under subsection 4 or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled thereto within ten years after it was so delivered, conveyed or paid, it shall be delivered, conveyed or paid to him, but, if not so claimed, it vests in the Public Trustee for the use of Ontario, and, if the person beneficially entitled thereto at any time thereafter establishes his right thereto to the satisfaction of the Lieutenant Governor in Council, an amount equal to the amount so vested in the Public Trustee shall be paid to him.

165.—(1) If the articles of dissolution conform to law, the Minister shall, when all prescribed fees have been paid and all taxes payable by the co-operative to the Treasurer of Ontario have been paid, ^{Certificate of dissolution}

- (a) endorse on each duplicate of the articles of dissolution the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the co-operative or its agent a certificate of dissolution to which he shall affix the other duplicate.

(2) The dissolution becomes effective and the co-operative is dissolved upon the date set forth in the certificate of dissolution. ^{Effect of certificate}

166. Where sufficient cause is shown to the Minister, he may, after he has given the co-operative an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any certificate issued by him under this Act, and, ^{Cancellation of certificate, etc., by Minister}

- (a) in the case of the cancellation of a certificate of incorporation, the co-operative is dissolved on the date fixed in the order;
- (b) in the case of the cancellation of any other certificate, the matter that became effective upon the issuance of the certificate ceases to be in effect from the date fixed in the order.

167.—(1) Where a co-operative is in default in filing an annual return or financial statement for a period of two years, the Minister may give notice, by registered mail to the co-operative or by publication once in *The Ontario Gazette*, that an order dissolving the co-operative will be issued unless the co-operative files the annual return or financial statement within one year after the giving of the notice. ^{Notice of dissolution}

(2) Upon default in compliance with the notice given under subsection 1, the Minister may by order cancel the certificate of incorporation and, subject to subsection 3, the co-operative is dissolved on the date fixed in the order. ^{Dissolution for default}

(3) Where a co-operative is dissolved under subsection 2, the Minister, on the application of any interested person immediately before the dissolution, made within two years after the date of dissolution, may in his discretion by order, on such ^{Revival}

terms and conditions as he sees fit to impose, revive the co-operative, and thereupon the co-operative, subject to the terms and conditions of the order and to any rights acquired by any person after its dissolution, is restored to its legal position, including all its property, rights, privileges and franchises, and is subject to all its liabilities, contracts, disabilities and debts, as at the date of its dissolution, in the same manner and to the same extent as if it had not been dissolved.

Suits after
dissolution

168.—(1) Notwithstanding the dissolution of a co-operative under section 165, 166 or 167,

- (a) any action, suit or other proceeding commenced by or against the co-operative before its dissolution may be proceeded with as if the co-operative had not been dissolved;
- (b) any action, suit or other proceeding may be brought against the co-operative within two years after its dissolution as if the co-operative had not been dissolved; and
- (c) any property that would have been available to satisfy any judgment, order or other decision if the co-operative had not been dissolved remains available for such purpose.

Service after
dissolution

(2) For the purposes of this section, the service of any process on a co-operative after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Ministry as being a director or officer of the co-operative before the dissolution.

Liability of
members to
creditors

169.—(1) Notwithstanding the dissolution of a co-operative, each of the members among whom its property has been distributed remains liable to its creditors to the extent of the amount received by him upon the distribution, and an action in a court of competent jurisdiction to enforce such liability may be brought against him within two years from the date of the dissolution and not thereafter.

Action
against one
member as
representing
class

(2) Where there are numerous members, the court referred to in subsection 1 may permit an action to be brought against one or more members as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the referee's office all such members as are found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined.

170. Subject to section 168, any real or personal property of a co-operative that has not been disposed of at the date of its dissolution is forfeit to the Crown. Forfeiture of undischarged property

171. At the same time as a co-operative is required to file its financial statements with the Minister under subsection 2 of section 141, the co-operative shall also file an annual return in such form as the regulations prescribe. Annual return

GENERAL

172.—(1) Subject to the articles or by-laws of a co-operative, Notice to directors and members

(a) a notice or other document required to be given or sent by a co-operative to a member or director may be delivered personally or sent by prepaid mail addressed to the member or director at his latest address as shown on the records of the co-operative; and

(b) a notice or other document sent by mail by a co-operative to a member or director shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail.

(2) Where notices or other documents required by this Act, the articles or by-laws to be given or sent by a co-operative to a member have been mailed to the member at his latest address as shown on the records of the co-operative and where, on three consecutive occasions, notices or other documents have been returned by the Post Office to the co-operative, the co-operative is not required to mail to the member any further notices or other documents until such time as the co-operative receives written notice from the member requesting that notices and other documents be sent to the member at a specified address. Undelivered mail

(3) Except where otherwise provided in this Act, a notice or document required to be given or sent to a co-operative may be sent to the co-operative by prepaid mail at its head office as shown on the records of the Ministry and shall be deemed to be given or sent at the time when it would be delivered in the ordinary course of mail. Notice to co-operative

(4) Where a notice is required by this Act to be given to any person, the giving of the notice may be waived or the time for the notice may be waived or abridged with the consent in writing of such person, whether before or after the time prescribed. Waiver of notice and abridgement of time

Offence,
false
statement

173.—(1) Every person who makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that, at the time and in the light of the circumstances under which it was made, is false or misleading in respect of any material fact or that omits to state any material fact the omission of which makes the statement false or misleading is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Defence

(2) No person is guilty of an offence under subsection 1 if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

Offence,
failure
to file

174.—(1) Every person who fails to file with the Minister any document required by this Act to be filed with him is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or, if such person is a corporation, to a fine of not more than \$20,000.

Idem

(2) Where a corporation is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000.

Consent

175. No proceeding under section 173 or 174 shall be commenced except with the consent or under the direction of the Minister.

Offence,
general

176.—(1) Except where otherwise provided, every person who commits an act contrary to or fails or neglects to comply with any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or, if such person is a corporation, to a fine of not more than \$10,000.

Idem

(2) Where a corporation is guilty of an offence under subsection 1, every director or officer thereof who authorized, permitted or acquiesced in the offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000.

Limitation

177.—(1) No proceeding under section 173 or 174 or under section 176 for a contravention of section 118 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the Minister as certified by him.

(2) Subject to subsection 1, no proceeding for an offence ^{Idem} under this Act or the regulations shall be commenced more than one year after the time when the subject-matter of the offence arose.

178. Where a co-operative or a director, officer or employee of a co-operative does not comply with any provision of this Act, the articles or the by-laws of the co-operative, the Minister or a member or a creditor of the co-operative, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, may apply to the court for an order directing the co-operative, director, officer or employee, as the case may be, to comply with such provision, and upon such an application the court may make such order or such other order as the court thinks fit. ^{Order for compliance}

179.—(1) The Minister may require any fact relevant to the performance of his duties under this Act or the regulations to be verified by affidavit or otherwise. ^{Proof by affidavit}

(2) For the purpose of holding a hearing under this Act, the Minister may administer oaths to witnesses and require them to give evidence under oath. ^{Oaths at hearings}

180. The Minister shall cause notice to be published forthwith in *The Ontario Gazette*, ^{Publication of notices in *The Ontario Gazette*}

(a) of the issue of every certificate under section 6, 9, 154, 155, 157, 158 or 165;

(b) of the issue of every order under section 118, 166 or 167;

(c) of the filing of a certified copy of an order under subsection 6 of section 215 or subsection 2 of section 228 of *The Business Corporations Act*;

R.S.O. 1970,
c. 53

(d) of the filing of a notice by a liquidator under subsection 2 of section 215 of *The Business Corporations Act*.

181.—(1) Upon payment of the prescribed fee, any person is entitled to examine any document filed with or issued by the Minister under this Act, and to make extracts therefrom. ^{Searches}

(2) Upon payment of the prescribed fee, the Minister shall furnish any person with a certificate as to whether or not a document has been filed with or issued by him under this Act or any predecessor thereof or with a certified copy of any such document. ^{Certifications by Minister}

Execution of
certificates
of Minister

182.—(1) Where this Act requires or authorizes the Minister to issue a certificate or certify any fact, the certificate shall be issued under the seal of the Minister and shall be signed by him or by such officer of the Ministry as is designated by the regulations.

Certificates
as evidence

(2) Any certificate purporting to be under the seal of the Minister and signed by a person authorized by or under subsection 1, or any certified copy, is receivable in evidence in any action, prosecution or other proceeding as *prima facie* proof of the facts so certified without proof of the seal or of the signature or the official position of the person appearing to have signed the certificate.

Notice of
refusal
to file

183.—(1) Where the Minister refuses to file any articles or any other document required by this Act to be filed by him before it becomes effective, he shall give written notice to the person who delivered the articles or other document of his refusal, specifying the reasons therefor.

Failure to
act deemed
refusal

(2) Where, within six months after the delivery to the Minister of articles or other document referred to in subsection 1, the Minister has not filed or refused to file such articles or other document, he shall be deemed for the purposes of section 184 to have refused to file it.

Appeal from
Minister

184.—(1) Any person who feels aggrieved by a decision of the Minister to,

- (a) refuse to file articles or any other document or to issue any certificate required by this Act to be filed or issued;
- (b) issue or refuse to issue a certificate of amendment under subsection 2, 3 or 4 of section 9;
- (c) issue a certificate of amendment under section 143, 144 or 152;
- (d) issue an order under section 166,

may appeal the decision to the Supreme Court.

Certificate
of Minister

(2) The Minister shall certify to the Registrar of the Supreme Court,

- (a) the decision of the Minister, together with a statement of the reasons therefor;
- (b) the record of any hearing; and

- (c) all written submissions to the Minister or other material that is relevant to the appeal.

(3) The Minister is entitled to be heard, by counsel or <sup>Representa-
tion</sup> otherwise, upon the argument of an appeal under this section.

(4) Where an appeal is taken under this section, the Supreme <sup>Order of
court</sup> Court may by its order direct the Minister to make such decision or to do such other act as the Minister is authorized and empowered to do under this Act and as the court thinks proper, having regard to the material and submissions before it and to this Act, and the Minister shall make such decision or do such act accordingly.

(5) Notwithstanding an order of the Supreme Court, the Minister has power to make any further decision upon new <sup>Minister
may make
further
decision</sup> material or where there is a material change in the circumstances, and every such decision is subject to this section.

185. An appeal lies to the Court of Appeal from any <sup>Appeal
from court</sup> order made by the court under this Act.

186. The Lieutenant Governor in Council may make ^{Regulations} regulations respecting any matter that he considers necessary relating to the incorporation, conduct and dissolution of co-operatives including, without limiting the generality of the foregoing, regulations,

- (a) respecting names, objects, authorized capital, the form and contents of offering statements, membership, the designations, preferences, rights, conditions, restrictions, limitations, or prohibitions attaching to shares or classes of shares or any other matter pertaining to articles or the filing thereof;
- (b) requiring the payment of fees for any matter that the Minister is required or authorized to do under this Act, and prescribing the amounts thereof;
- (c) prescribing any matter required by this Act to be prescribed by the regulations;
- (d) designating officers of the Ministry for the purposes of paragraph 4 of subsection 1 of section 1 and section 182.

187.—(1) For three years after this Act comes into force <sup>Continuance
of letters
patent, etc.</sup> any provision in the letters patent, supplementary letters patent or by-laws and any special resolution of the co-operative that was valid immediately before this Act comes

into force, except a provision that contravenes section 110, continues to be valid and in effect but any additions or amendments to or deletions from any provision in the letters patent, supplementary letters patent or by-laws of a co-operative shall be made in accordance with this Act.

* Continuance
re shares
not fully
paid
R.S.O. 1970,
c. 89.

(2) For three years after this Act comes into force the provisions of *The Corporations Act* relating to the liability of the holder of shares that are not fully paid and to the enforcement of such liability continue to apply in respect of shares that are not fully paid.

Commence-
ment

188. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

189. This Act may be cited as *The Co-operative Corporations Act, 1973*.

The Co-operative Corporations Act, 1973

1st Reading

October 2nd, 1973

2nd Reading

October 16th, 1973

3rd Reading

October 22nd, 1973

THE HON. J. T. CLEMENT
Minister of Consumer and
Commercial Relations

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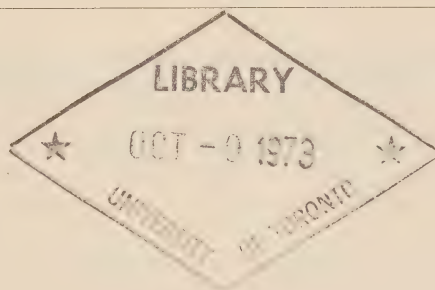
BILL 186

Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

**An Act to amend
The Personal Property Security Act**

THE HON. J. T. CLEMENT
Minister of Consumer and Commercial Relations



TORONTO

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EXPLANATORY NOTES

SECTION 1. The purpose of the amendment is to change the personal property registration system from document filing to notice filing; that is, instead of filing a copy of the security agreement the creditor would file a financing statement containing certain essential particulars of the security agreement.

SECTION 2. See explanatory note for section 1.

SECTION 3. Where collateral includes fixtures, the amendment would require the land to be identified by means other than a full legal description.

SECTION 4. The amendment adds a provision that a secured party may be required to furnish a copy of the security agreement and a provision that the secured party may require payment of a fee of \$2 for providing the copy or for providing a statement of account more often than once in six months.

An Act to amend The Personal Property Security Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 6 of *The Personal Property Security Act*, s. 6 (2),
being chapter 344 of the Revised Statutes of Ontario, 1970,^{amended}
is amended by striking out "caution" in the third line and
inserting in lieu thereof "financing statement".
2. Subsection 2 of section 7 of the said Act is amended by s. 7 (2),
striking out "the security agreement covering the collateral",^{amended}
in the fifth line and inserting in lieu thereof "a financing
statement in the prescribed form".
3. Clause *b* of section 10 of the said Act is amended by striking s. 10 (b),
out "a description" in the fourth line and inserting in lieu^{amended}
thereof "identification".
- 4.—(1) Subsection 1 of section 20 of the said Act is repealed and s. 20 (1),
the following substituted therefor:^{re-enacted}
 - (1) A debtor or a person having an interest in the collateral<sup>Statements
of account</sup>
or an execution creditor may, by a notice in writing, require
the secured party to furnish to him any one or more of,
 - (a) a statement in writing of the amount of the indebted-
ness and of the terms of payment thereof as of the
date specified in the notice;
 - (b) a statement in writing approving or correcting as of
the date specified in the notice a statement of the
collateral attached to the notice;
 - (c) a statement in writing approving or correcting as of
the date specified in the notice a statement of the
amount of the indebtedness and of the terms of
payment thereof; or

(d) a true copy of the security agreement.

s. 20 (3),
amended

- (2) Subsection 3 of the said section 20 is amended by inserting at the commencement thereof "Subject to payment of any fee required pursuant to subsection 6".

s. 20,
amended

- (3) The said section 20 is amended by adding thereto the following subsection:

Fee

(6) The secured party may require payment to him of a fee of \$2 for each statement or copy of the security agreement required pursuant to subsection 1, but the debtor is entitled to a statement without charge once in every six months.

s. 26 (1),
amended

5. Subsection 1 of section 26 of the said Act is amended by striking out "registered security agreement" in the fourth line and inserting in lieu thereof "security agreement signed by the debtor and the secured party".

s. 27 (2),
re-enacted

6. Subsection 2 of section 27 of the said Act is repealed and the following substituted therefor:

Idem

(2) The security interest in proceeds is a perfected security interest if the security interest in the collateral is perfected but it ceases to be a perfected security interest and becomes unperfected after ten days after receipt of the proceeds by the debtor unless,

(a) a financing statement in the prescribed form in respect of the collateral is registered; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period,

but there is no perfected security interest in proceeds that are not identifiable or traceable.

s. 34 (2) (b),
amended

7. Clause b of subsection 2 of section 34 of the said Act is amended by striking out "security agreement, a notice of intention or a caution" in the fifth line and inserting in lieu thereof "financing statement in the prescribed form".

s. 44 (1),
re-enacted

8. Subsection 1 of section 44 of the said Act is repealed and the following substituted therefor:

Certificate
of registrar

(1) Upon the request of any person and upon payment of the prescribed fee the registrar shall,

(a) issue a certificate stating whether there is registered at the time mentioned in the certificate a financing

SECTION 5. See explanatory note for section 1.

SECTION 6. The subsection is revised for clarification and to meet the requirements of the notice filing system.

SECTION 7. See explanatory note for section 1.

SECTION 8. See explanatory note for section 1.

SECTION 9. The sections provide for the method of perfecting a security interest by registration of a financing statement and recording any subsequent changes in status by registering a financing change statement.

statement or financing change statement the registration of which is still effective in which the person named in the certificate is shown as a debtor and, if there is, the registration number of it, and any other information recorded in the central office of the registration system; or

- (b) furnish a certified copy of a registered financing statement or a registered financing change statement.

9. Sections 46 to 54 of the said Act are repealed and the following ^{ss. 46-54, re-enacted} substituted therefor:

46. A financing statement or financing change statement to ^{Place of registration and effective time of registration} be registered under this Act may be tendered for registration,

- (a) by personal delivery to any branch office; or

- (b) by mail addressed to an address fixed by the regulations,

and the registration is effective from the time assigned to the registration by the registrar or branch registrar.

47.—(1) In order to register under this Act for the purpose of perfecting a security interest that is created in or ^{Registration of financing statement} provided for in a security agreement, a financing statement in the prescribed form shall be registered.

(2) Where the collateral is goods to be held for sale or lease, ^{Before security agreement signed} a financing statement in the prescribed form may be registered before a security agreement is signed for the purpose of perfecting a security interest in such goods.

(3) The financing statement referred to in subsection 1 shall ^{Time for registration} not be registered before the execution of the security agreement or after thirty days from the date of the execution of the security agreement.

(4) Subject to section 63, a financing statement that is not ^{Failure to register} registered in accordance with the provisions of subsection 3 does not constitute notice or perfection under subsection 1 of section 53.

(5) An error of a clerical nature or in an immaterial or non-^{Errors} essential part of a financing statement or financing change statement that has not misled does not invalidate the registration or destroy the effect of the registration.

Assignments

48.—(1) Where a security interest is perfected by registration and the secured party has assigned his interest, a financing change statement in the prescribed form may be registered.

Idem

(2) Where a security interest has not been perfected by registration and the secured party has assigned his interest, a financing statement in the prescribed form may be registered in which the assignee is shown as the secured party.

Idem

(3) Upon the registration of the financing change statement under subsection 1 or the financing statement under subsection 2, the assignee becomes the secured party of record.

Transfer of collateral

49.—(1) Where a security interest has been perfected by registration and the debtor with the consent of the secured party transfers his interest in the collateral, the transferee becomes a debtor and the security interest becomes unperfected and the registration ceases to constitute notice unless the secured party registers a financing change statement in the prescribed form within fifteen days of the time he consents to the transfer.

Idem

(2) Where a security interest has been perfected by registration and the secured party learns that,

(a) the debtor has transferred his interest in the collateral;
or

(b) the debtor has changed his name,

the security interest becomes unperfected and the registration ceases to constitute notice fifteen days after the secured party learns of,

(c) the transfer and the name of the transferee; or

(d) the change of name and the new name of the transferee,

as the case may be, unless he registers a financing change statement in the prescribed form within such fifteen days.

Financing change statement

(3) A security interest that becomes unperfected under subsection 1 or 2 may thereafter be perfected by registering a financing change statement in the prescribed form at any time during the remainder of the unexpired registration period.

Amendments

50. Where a security interest is perfected by registration, and,

- (a) the security agreement to which it relates is amended;
- (b) the name or address of the secured party or debtor is changed; or
- (c) an error or omission of a clerical nature was made in the preparation of the financing statement or financing change statement that is registered in respect of the security interest,

a financing change statement in the prescribed form may be registered at any time during the period that the registration is effective.

51. Where a secured party of record has subordinated his <sup>Subordina-
tion</sup> interest to the interest of another person, a financing change statement in the prescribed form may be registered at any time during the period that the registration of the subordinated interest is effective.

52. Where a security interest has been perfected by ^{Renewal} registration, the registration may be renewed,

- (a) before the expiration of the registration period, by the registration of a financing change statement in the prescribed form; or
- (b) notwithstanding subsection 3 of section 47, after the expiration of the registration period, by the registration of a financing statement in the prescribed form.

53.—(1) Where the collateral is other than instruments, <sup>Effect of
registration</sup> securities, letters of credit, advices of credit or negotiable documents of title, registration under this Act of,

- (a) a financing statement constitutes,
 - (i) notice of the security interest to which it relates to all persons claiming any interest in such collateral, and
 - (ii) subject to section 21, perfection of the security interest,

during the period of three years following such registration;

- (b) a financing change statement under clause *a* of section 52 extends the effect of the registration of

the financing statement to which it relates during the period of three years following the registration of the financing change statement ;

- (c) a financing statement under clause *b* of section 52 extends the effect of the registration of the original financing statement during the period of three years following the registration of the financing statement under clause *b* of section 52, but when such registration has prejudiced the rights that any person acquired by an act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights ;
- (d) a financing change statement under subsection 3 of section 49 extends the effect of the registration of the financing statement to which it relates for the remainder of the unexpired registration period, but when such registration has prejudiced the rights that any person acquired by an act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights ;
- (e) any other financing change statement, constitutes notice thereof to all persons claiming any interest in such collateral during the remainder of the period for which the registration of the financing statement is effective.

Three
year
period

(2) For the purposes of this section, the period of three years in respect of the registration of a financing statement or a financing change statement is a period of time commencing with the time assigned to the registration of the statement by the registrar or branch registrar and ending with the expiry of the third anniversary of the date of the registration.

Fixtures

54.—(1) Where the collateral is or includes fixtures or goods that may become fixtures, or crops, or oil, gas or other minerals to be extracted, or timber to be cut, a notice in the prescribed form may be registered in the proper land registry office.

Discharge
of notice

(2) A notice registered under subsection 1 may be discharged by a certificate in the prescribed form and the certificate may be registered in the proper land registry office.

(3) The registration of the notice under subsection 1 shall, ^{Effect of registration} for the purposes of subsection 3 of section 36, constitute actual notice of the security interest.

54a.—(1) Where a security interest is perfected by regis- ^{Discharge or partial discharge of registration} tration and the collateral or proceeds, as the case requires, is released or partially released, the registration may be discharged or partially discharged by the registration of a financing change statement in the prescribed form.

(2) The financing change statement referred to in subsection ^{Idem} 1 shall not be registered unless financing change statements in respect of all assignments by the secured party or transfers by the debtor are registered.

(3) Where a financing statement is registered under this ^{Demand} Act, and,

- (a) all the obligations under the security agreement to which it relates have been performed; or
- (b) it is agreed to release part of the collateral covered by the security agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations,

any person having an interest in the collateral covered by the security agreement may deliver a written demand to the secured party, either personally or by registered mail, demanding a financing change statement referred to in subsection 1 and the secured party shall sign and deliver personally or by registered mail to the person demanding it at the place set out in the demand the financing change statement together with financing change statements in respect of all assignments by the secured party of the security interest or transfers by the debtor of his interest in the collateral in respect of which financing change statements have not been registered.

(4) Where the secured party, without reasonable excuse, ^{Failure to deliver} fails to deliver the financing change statements required under subsection 3 within ten days after receipt of a demand therefor, he shall pay \$100 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

(5) Upon application to the county or district court by ^{Security or payment into court} originating notice to all persons concerned or to such persons as the judge may determine, the judge may,

- (a) allow security for or payment into court of the amount claimed by the secured party and such costs as he may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement; or
- (b) order upon any ground he considers proper that the registrar amend the recorded information to indicate that the registration of the financing statement has been discharged or partially discharged, as the case may be.

s. 58 (5),
re-enacted

10. Subsection 5 of section 58 of the said Act is repealed and the following substituted therefor:

Notice to
be given
by secured
party

(5) Unless the collateral is perishable or unless the secured party believes on reasonable grounds that the collateral will decline speedily in value, the secured party shall give to the debtor and to any other person who has a security interest in the collateral that is perfected by registration against the name of the debtor and to any other person who is known by the secured party to have a security interest in the collateral not less than fifteen days notice in writing containing,

- (a) a brief description of the collateral;
- (b) the amount required to satisfy the obligation secured by his security interest;
- (c) the amount of the applicable expenses referred to in clause *a* of subsection 1 or, in a case where the amount of such expenses has not been determined, his reasonable estimate thereof;
- (d) a statement that upon payment of the amounts due the debtor may redeem the collateral;
- (e) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and
- (f) the date, time and place of any public sale or of the date after which any private disposition of the collateral is to be made.

s. 60 (2),
amended

11. Subsection 2 of section 60 of the said Act is amended by striking out "security agreement" in the eighth line and inserting in lieu thereof "financing statement in the prescribed form".

SECTION 10. See explanatory note for section 1.

SECTION 11. See explanatory note for section 1.

SECTION 12. See explanatory note for section 1.

SECTION 13. See explanatory note for section 1.

SECTION 14. The section is amended to include chattel mortgages, conditional sale contracts and assignments of book debts. The reference to the Inspector of Legal Offices is changed to the Director of Land Registration to whom all duties respecting property registration have been transferred. The new subsection 2 will enable the registrar to maintain in the registration system information related to only currently effective registrations.

12. Subsection 2 of section 63 of the said Act is repealed.

s. 63 (2),
repealed

13. Section 65 of the said Act is repealed and the following substituted therefor:

s. 65,
re-enacted

65.—(1) Where a security interest was covered by an unexpired filing or registration under *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act*, and in respect of which a financing statement was filed before section 13 of the Statutes of Ontario, 1973, chapter ... comes into force,

Transitional
provision
R.S.O. 1970,
cc. 33, 45, 76

- (a) the financing statement and any filed financing change statement relating thereto shall be deemed to be registered; and
- (b) the security interest to which the financing statement relates shall be deemed to be perfected,

under this Act and, subject to this Act, the effect of the prior filing or registration is continued for the unexpired portion of the filing or registration period.

(2) Upon the request of any person and upon payment of the prescribed fee, any chattel mortgage registered under *The Bills of Sale and Chattel Mortgages Act*, any contract registered under *The Conditional Sales Act* or any assignment of book debts registered under *The Assignment of Book Debts Act* shall, subject to section 67, be provided for inspection.

Inspection
of
documents

14. Section 67 of the said Act is repealed and the following substituted therefor:

s. 67,
re-enacted

67.—(1) Where,

Destruction
of
documents

- (a) books, documents, records or papers have been preserved for the purposes of this Act; or
- (b) chattel mortgages, conditional sale contracts or assignments of book debts registered under *The Bills of Sale and Chattel Mortgages Act*, *The Conditional Sales Act* or *The Assignment of Book Debts Act* have been preserved,

R.S.O. 1970,
cc. 45, 76,
33, 409

for so long that it appears they need not be preserved any longer, the Director of Land Registration appointed under *The Registry Act* may authorize their destruction.

(2) The registrar may remove from the registration system information related to a financing statement or financing change statement that is no longer effective.

Removal
from
registration
system

s. 70 (i),
re-enacted

15. Clause *i* of section 70 of the said Act is repealed and the following substituted therefor:

- (i) prescribing forms, the information to be contained in forms, the manner of recording the information and the persons who shall sign forms;
- (ia) requiring that the forms to be used shall be those provided or approved by the registrar;
- (ib) governing the time assigned to the registration of financing statements and financing change statements;
- (ic) prescribing abbreviations, expansions or symbols that may be used in a financing statement or financing change statement or in the recording or production of information by the registrar;
- (id) fixing the address to which financing statements and financing change statements shall be addressed when tendered by mail for registration;
- (ie) providing for the approval by the registrar of the forms to be used for the purposes of this Act, and for the withdrawal by the registrar of any such approval.

Commence-
ment

16.—(1) This Act, except sections 1 to 14, comes into force on the day it receives Royal Assent.

Idem

(2) Sections 1 to 14 come into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

17. This Act may be cited as *The Personal Property Security Amendment Act, 1973*.

SECTION 15. The amendments add matters in respect of which the Lieutenant Governor in Council may make regulations.

An Act to amend
The Personal Property Security Act

1st Reading

October 2nd, 1973

2nd Reading

3rd Reading

THE HON. J. T. CLEMENT
Minister of Consumer and
Commercial Relations

(Government Bill)

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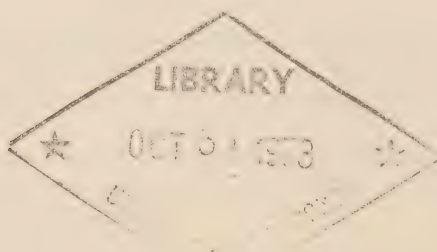
BILL 186

**Government
Publications**

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

**An Act to amend
The Personal Property Security Act**

THE HON. J. T. CLEMENT
Minister of Consumer and Commercial Relations



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

An Act to amend The Personal Property Security Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 6 of *The Personal Property Security Act*, ^{s. 6 (2), amended} being chapter 344 of the Revised Statutes of Ontario, 1970, is amended by striking out "caution" in the third line and inserting in lieu thereof "financing statement".
2. Subsection 2 of section 7 of the said Act is amended by ^{s. 7 (2), amended} striking out "the security agreement covering the collateral" in the fifth line and inserting in lieu thereof "a financing statement in the prescribed form".
3. Clause *b* of section 10 of the said Act is amended by striking ^{s. 10 (b), amended} out "a description" in the fourth line and inserting in lieu thereof "identification".
- 4.—(1) Subsection 1 of section 20 of the said Act is repealed and ^{s. 20 (1), re-enacted} the following substituted therefor:
 - (1) A debtor or a person having an interest in the collateral ^{Statements of account} or an execution creditor may, by a notice in writing, require the secured party to furnish to him any one or more of,
 - (a) a statement in writing of the amount of the indebtedness and of the terms of payment thereof as of the date specified in the notice;
 - (b) a statement in writing approving or correcting as of the date specified in the notice a statement of the collateral attached to the notice;
 - (c) a statement in writing approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof; or

(d) a true copy of the security agreement.

s. 20 (3),
amended

- (2) Subsection 3 of the said section 20 is amended by inserting at the commencement thereof "Subject to payment of any fee required pursuant to subsection 6".

s. 20,
amended

- (3) The said section 20 is amended by adding thereto the following subsection:

Fee

- (6) The secured party may require payment to him of a fee of \$2 for each statement or copy of the security agreement required pursuant to subsection 1, but the debtor is entitled to a statement without charge once in every six months.

s. 26 (1),
amended

5. Subsection 1 of section 26 of the said Act is amended by striking out "registered security agreement" in the fourth line and inserting in lieu thereof "security agreement signed by the debtor and the secured party".

s. 27 (2),
re-enacted

6. Subsection 2 of section 27 of the said Act is repealed and the following substituted therefor:

Idem

- (2) The security interest in proceeds is a perfected security interest if the security interest in the collateral is perfected but it ceases to be a perfected security interest and becomes unperfected after ten days after receipt of the proceeds by the debtor unless,

(a) a financing statement in the prescribed form in respect of the collateral is registered; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period,

but there is no perfected security interest in proceeds that are not identifiable or traceable.

s. 34 (2) (b),
amended

7. Clause b of subsection 2 of section 34 of the said Act is amended by striking out "security agreement, a notice of intention or a caution" in the fifth line and inserting in lieu thereof "financing statement in the prescribed form".

s. 44 (1),
re-enacted

8. Subsection 1 of section 44 of the said Act is repealed and the following substituted therefor:

Certificate
of registrar

- (1) Upon the request of any person and upon payment of the prescribed fee the registrar shall,

(a) issue a certificate stating whether there is registered at the time mentioned in the certificate a financing

statement or financing change statement the registration of which is still effective in which the person named in the certificate is shown as a debtor and, if there is, the registration number of it, and any other information recorded in the central office of the registration system; or

- (b) furnish a certified copy of a registered financing statement or a registered financing change statement.

9. Sections 46 to 54 of the said Act are repealed and the following ^{ss. 46-54, re-enacted} substituted therefor:

46. A financing statement or financing change statement to ^{Place of registration and effective time of registration} be registered under this Act may be tendered for registration,

- (a) by personal delivery to any branch office; or
- (b) by mail addressed to an address fixed by the regulations,

and the registration is effective from the time assigned to the registration by the registrar or branch registrar.

47.—(1) In order to register under this Act for the purpose of perfecting a security interest that is created in ^{Registration of financing statement} provided for in a security agreement, a financing statement in the prescribed form shall be registered.

(2) Where the collateral is goods to be held for sale or lease, ^{Before security agreement signed} a financing statement in the prescribed form may be registered before a security agreement is signed for the purpose of perfecting a security interest in such goods.

(3) The financing statement referred to in subsection 1 shall ^{Time for registration} not be registered before the execution of the security agreement or after thirty days from the date of the execution of the security agreement.

(4) Subject to section 63, a financing statement that is not ^{Failure to register} registered in accordance with the provisions of subsection 3 does not constitute notice or perfection under subsection 1 of section 53.

(5) An error of a clerical nature or in an immaterial or non-^{Errors} essential part of a financing statement or financing change statement that has not misled does not invalidate the registration or destroy the effect of the registration.

Assignments

48.—(1) Where a security interest is perfected by registration and the secured party has assigned his interest, a financing change statement in the prescribed form may be registered.

Idem

(2) Where a security interest has not been perfected by registration and the secured party has assigned his interest, a financing statement in the prescribed form may be registered in which the assignee is shown as the secured party.

Idem

(3) Upon the registration of the financing change statement under subsection 1 or the financing statement under subsection 2, the assignee becomes the secured party of record.

Transfer of collateral

49.—(1) Where a security interest has been perfected by registration and the debtor with the consent of the secured party transfers his interest in the collateral, the transferee becomes a debtor and the security interest becomes unperfected and the registration ceases to constitute notice unless the secured party registers a financing change statement in the prescribed form within fifteen days of the time he consents to the transfer.

Idem

(2) Where a security interest has been perfected by registration and the secured party learns that,

(a) the debtor has transferred his interest in the collateral;
or

(b) the debtor has changed his name,

the security interest becomes unperfected and the registration ceases to constitute notice fifteen days after the secured party learns of,

(c) the transfer and the name of the transferee; or

(d) the change of name and the new name of the transferee,

as the case may be, unless he registers a financing change statement in the prescribed form within such fifteen days.

Financing change statement

(3) A security interest that becomes unperfected under subsection 1 or 2 may thereafter be perfected by registering a financing change statement in the prescribed form at any time during the remainder of the unexpired registration period.

Amendments

50. Where a security interest is perfected by registration, and,

- (a) the security agreement to which it relates is amended;
- (b) the name or address of the secured party or debtor is changed; or
- (c) an error or omission of a clerical nature was made in the preparation of the financing statement or financing change statement that is registered in respect of the security interest,

a financing change statement in the prescribed form may be registered at any time during the period that the registration is effective.

51. Where a secured party of record has subordinated his <sup>Subordina-
tion</sup> interest to the interest of another person, a financing change statement in the prescribed form may be registered at any time during the period that the registration of the subordinated interest is effective.

52. Where a security interest has been perfected by ^{Renewal} registration, the registration may be renewed,

- (a) before the expiration of the registration period, by the registration of a financing change statement in the prescribed form; or
- (b) notwithstanding subsection 3 of section 47, after the expiration of the registration period, by the registration of a financing statement in the prescribed form.

53.—(1) Where the collateral is other than instruments, <sup>Effect of
registration</sup> securities, letters of credit, advices of credit or negotiable documents of title, registration under this Act of,

- (a) a financing statement constitutes,
 - (i) notice of the security interest to which it relates to all persons claiming any interest in such collateral, and
 - (ii) subject to section 21, perfection of the security interest,

during the period of three years following such registration;

- (b) a financing change statement under clause a of section 52 extends the effect of the registration of

the financing statement to which it relates during the period of three years following the registration of the financing change statement;

- (c) a financing statement under clause *b* of section 52 extends the effect of the registration of the original financing statement during the period of three years following the registration of the financing statement under clause *b* of section 52, but when such registration has prejudiced the rights that any person acquired by an act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights;
- (d) a financing change statement under subsection 3 of section 49 extends the effect of the registration of the financing statement to which it relates for the remainder of the unexpired registration period, but when such registration has prejudiced the rights that any person acquired by an act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights;
- (e) any other financing change statement, constitutes notice thereof to all persons claiming any interest in such collateral during the remainder of the period for which the registration of the financing statement is effective.

Three
year
period

(2) For the purposes of this section, the period of three years in respect of the registration of a financing statement or a financing change statement is a period of time commencing with the time assigned to the registration of the statement by the registrar or branch registrar and ending with the expiry of the third anniversary of the date of the registration.

Fixtures

54.—(1) Where the collateral is or includes fixtures or goods that may become fixtures, or crops, or oil, gas or other minerals to be extracted, or timber to be cut, a notice in the prescribed form may be registered in the proper land registry office.

Discharge
of notice

(2) A notice registered under subsection 1 may be discharged by a certificate in the prescribed form and the certificate may be registered in the proper land registry office.

(3) The registration of the notice under subsection 1 shall, ^{Effect of registration} for the purposes of subsection 3 of section 36, constitute actual notice of the security interest.

54a.—(1) Where a security interest is perfected by registration and the collateral or proceeds, as the case requires, is released or partially released, ^{Discharge or partial discharge of registration} the registration may be discharged or partially discharged by the registration of a financing change statement in the prescribed form.

(2) The financing change statement referred to in subsection ^{Idem} 1 shall not be registered unless financing change statements in respect of all assignments by the secured party or transfers by the debtor are registered.

(3) Where a financing statement is registered under this ^{Demand} Act, and,

- (a) all the obligations under the security agreement to which it relates have been performed; or
- (b) it is agreed to release part of the collateral covered by the security agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations,

any person having an interest in the collateral covered by the security agreement may deliver a written demand to the secured party, either personally or by registered mail, demanding a financing change statement referred to in subsection 1 and the secured party shall sign and deliver personally or by registered mail to the person demanding it at the place set out in the demand the financing change statement together with financing change statements in respect of all assignments by the secured party of the security interest or transfers by the debtor of his interest in the collateral in respect of which financing change statements have not been registered.

(4) Where the secured party, without reasonable excuse, ^{Failure to deliver} fails to deliver the financing change statements required under subsection 3 within ten days after receipt of a demand therefor, he shall pay \$100 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

(5) Upon application to the county or district court by ^{Security or payment into court} originating notice to all persons concerned or to such persons as the judge may determine, the judge may,

- (a) allow security for or payment into court of the amount claimed by the secured party and such costs as he may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement; or
- (b) order upon any ground he considers proper that the registrar amend the recorded information to indicate that the registration of the financing statement has been discharged or partially discharged, as the case may be.

s. 58 (5),
re-enacted

10. Subsection 5 of section 58 of the said Act is repealed and the following substituted therefor:

Notice to
be given
by secured
party

(5) Unless the collateral is perishable or unless the secured party believes on reasonable grounds that the collateral will decline speedily in value, the secured party shall give to the debtor and to any other person who has a security interest in the collateral that is perfected by registration against the name of the debtor and to any other person who is known by the secured party to have a security interest in the collateral not less than fifteen days notice in writing containing,

- (a) a brief description of the collateral;
- (b) the amount required to satisfy the obligation secured by his security interest;
- (c) the amount of the applicable expenses referred to in clause *a* of subsection 1 or, in a case where the amount of such expenses has not been determined, his reasonable estimate thereof;
- (d) a statement that upon payment of the amounts due the debtor may redeem the collateral;
- (e) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and
- (f) the date, time and place of any public sale or of the date after which any private disposition of the collateral is to be made.

s. 60 (2),
amended

11. Subsection 2 of section 60 of the said Act is amended by striking out "security agreement" in the eighth line and inserting in lieu thereof "financing statement in the prescribed form".

12. Subsection 2 of section 63 of the said Act is repealed.

s. 63 (2),
repealed

13. Section 65 of the said Act is repealed and the following substituted therefor:

s. 65,
re-enacted

65.—(1) Where a security interest was covered by an unexpired filing or registration under *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act* or *The Conditional Sales Act*, and in respect of which a financing statement was filed before section 13 of the Statutes of Ontario, 1973, chapter . . . comes into force,

Transitional
provision
R.S.O. 1970,
cc. 33, 45, 76

- (a) the financing statement and any filed financing change statement relating thereto shall be deemed to be registered; and
- (b) the security interest to which the financing statement relates shall be deemed to be perfected,

under this Act and, subject to this Act, the effect of the prior filing or registration is continued for the unexpired portion of the filing or registration period.

(2) Upon the request of any person and upon payment of the prescribed fee, any chattel mortgage registered under *The Bills of Sale and Chattel Mortgages Act*, any contract registered under *The Conditional Sales Act* or any assignment of book debts registered under *The Assignment of Book Debts Act* shall, subject to section 67, be provided for inspection.

Inspection
of
documents

14. Section 67 of the said Act is repealed and the following substituted therefor:

s. 67,
re-enacted

67.—(1) Where,

Destruction
of
documents

- (a) books, documents, records or papers have been preserved for the purposes of this Act; or
- (b) chattel mortgages, conditional sale contracts or assignments of book debts registered under *The Bills of Sale and Chattel Mortgages Act*, *The Conditional Sales Act* or *The Assignment of Book Debts Act* have been preserved,

R.S.O. 1970,
cc. 45, 76,
33, 409

for so long that it appears they need not be preserved any longer, the Director of Land Registration appointed under *The Registry Act* may authorize their destruction.

(2) The registrar may remove from the registration system information related to a financing statement or financing change statement that is no longer effective.

Removal
from
registration
system

s. 70 (i),
re-enacted

15. Clause *i* of section 70 of the said Act is repealed and the following substituted therefor:

- (i) prescribing forms, the information to be contained in forms, the manner of recording the information and the persons who shall sign forms;
- (ia) requiring that the forms to be used shall be those provided or approved by the registrar;
- (ib) governing the time assigned to the registration of financing statements and financing change statements;
- (ic) prescribing abbreviations, expansions or symbols that may be used in a financing statement or financing change statement or in the recording or production of information by the registrar;
- (id) fixing the address to which financing statements and financing change statements shall be addressed when tendered by mail for registration;
- (ie) providing for the approval by the registrar of the forms to be used for the purposes of this Act, and for the withdrawal by the registrar of any such approval.

Commence-
ment

16.—(1) This Act, except sections 1 to 14, comes into force on the day it receives Royal Assent.

Idem

(2) Sections 1 to 14 come into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

17. This Act may be cited as *The Personal Property Security Amendment Act, 1973*.

An Act to amend
The Personal Property Security Act

1st Reading

October 2nd, 1973

2nd Reading

October 16th, 1973

3rd Reading

October 22nd, 1973

THE HON. J. T. CLEMENT
Minister of Consumer and
Commercial Relations

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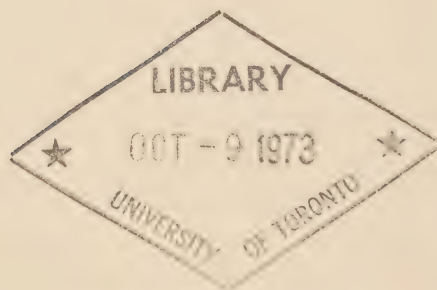
BILL 187

Government
Publications
Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

**An Act to amend
The Ministry of Consumer and Commercial Relations Act**

THE HON. J. T. CLEMENT
Minister of Consumer and Commercial Relations



TORONTO
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The tribunal when holding a hearing is now required to include at least one member who is engaged in the same industry as the registrant and chosen from a panel of persons engaged in the regulated industries. The amendment permits industries to be excepted from this requirement where there is a question of conflict of interest.

BILL 187

1973

**An Act to amend
The Ministry of Consumer and
Commercial Relations Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 7 of *The Ministry of Consumer and Commercial Relations Act*, being chapter 113 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection: s. 7,
amended

(7a) Where the nature or size of an industry for which registration is required under any Act administered by the Minister is such that a decision by one person engaged in the industry in respect of the affairs of another person engaged in the industry could not reasonably be made without the possibility of a conflict of interest, the Lieutenant Governor in Council may make regulations exempting the Act for which the Minister is responsible from the application of subsections 4 and 7. Application
of subss. 4
and 7

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment
3. This Act may be cited as *The Ministry of Consumer and Commercial Relations Amendment Act, 1973*. Short title

An Act to amend
The Ministry of Consumer and
Commercial Relations Act

1st Reading

October 2nd, 1973

2nd Reading

3rd Reading

THE HON. J. T. CLEMENT
Minister of Consumer and
Commercial Relations

(Government Bill)

CA20N
XB
-B 56

BILL 187

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act to amend
The Ministry of Consumer and Commercial Relations Act

THE HON. J. T. CLEMENT
Minister of Consumer and Commercial Relations

BILL 187

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Short title

An Act to amend
The Ministry of Consumer and
Commercial Relations Act

1st Reading

October 2nd, 1973

2nd Reading

October 16th, 1973

3rd Reading

October 16th, 1973

THE HON. J. T. CLEMENT
Minister of Consumer and
Commercial Relations

CA20N *to amend the Mortgage*
XB
-B56

Government
Publications

BILL 188

Government Bill

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

An Act to amend The Mortgage Brokers Act

THE HON. J. T. CLEMENT
Minister of Consumer and Commercial Relations



EXPLANATORY NOTE

The amendments require mortgage brokers to be under ownership of Canadian residents.

BILL 188

1973

An Act to amend The Mortgage Brokers Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of *The Mortgage Brokers Act*, being chapter 278 of ^{s. 1,} amended the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1971, chapter 50, section 59 and 1972, chapter 1, section 45, is further amended by adding thereto the following clauses:

(bb) "equity share" means any share of any class of shares of a corporation carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

.

(ea) "non-resident" means an individual, corporation or trust that is not a resident;

.

(ia) "resident" means,

- (i) an individual who is a Canadian citizen or has been lawfully admitted to Canada for permanent residence and who is ordinarily resident in Canada,
- (ii) a corporation, that is incorporated, formed or organized in Canada and that is controlled directly or indirectly by persons who are residents or by a resident trust, or
- (iii) a trust that is established by resident individuals or a resident corporation or one in

which resident individuals or corporations hold more than 50 per cent of the beneficial interest.

s. 5 (1),
amended

2. Subsection 1 of section 5 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 50, section 59, is amended by adding "or" at the end of clause *d* and by adding thereto the following clause:

(*e*) the applicant fails to comply with section 8 or 9, as the case may be.

ss. 8, 9,
enacted

3. The said Act is amended by adding thereto the following sections:

Resident
require-
ments re
individuals

8.—(1) Subject to subsection 2, no individual shall carry on business in Ontario as a mortgage broker unless,

(*a*) he is a resident; or

(*b*) where he is a member of a partnership or an association, syndicate or organization of individuals, every member thereof is a resident.

Idem

(2) An individual who is carrying on business as a registered mortgage broker immediately before the 2nd day of October, 1973, and who on that day is in contravention of subsection 1, may continue to carry on business subject to the provisions of this Act if,

(*a*) his interest or any part thereof is not transferred to or for the benefit of a non-resident; or

(*b*) where he is a member of a partnership or an association, syndicate or organization of individuals, no person who is a non-resident is admitted as a member thereof.

Resident
require-
ments re
corporations

9.—(1) No corporation shall carry on business in Ontario as a mortgage broker if,

(*a*) the total number of equity shares of the corporation beneficially owned, directly or indirectly, by non-residents or over which non-residents exercise control or direction exceeds 25 per cent of the total number of issued and outstanding equity shares of the corporation;

(*b*) the total number of equity shares of the corporation beneficially owned, directly or indirectly, by a non-

resident over which he exercises control or direction, together with other shareholders associated with him, if any, exceeds 10 per cent of the total number of issued and outstanding equity shares of the corporation; or

- (c) the corporation is not incorporated by or under an Act of Ontario, Canada or any province of Canada.

(2) A corporation that was carrying on business as a registered mortgage broker immediately before the 2nd day of October, 1973, and which on that day is in contravention of subsection 1, may continue to carry on business, subject to the provisions of this Act, ^{Idem}

- (a) in the case of a contravention of clause *a* or *b* of subsection 1, if no transfer of equity shares or beneficial interest therein including their control or direction is made to a non-resident or person associated with him excepting when the result would be in compliance with clauses *a* and *b* of subsection 1; or
- (b) in the case of a contravention of clause *c* of subsection 1, until the 1st day of January, 1975, but a corporation incorporated after this Act comes into force and before the 1st day of January, 1975 by or under an Act of Ontario, Canada or a province of Canada may, notwithstanding clauses *a* and *b* of subsection 1, be registered in the place of the first mentioned corporation if the equity shares of the new corporation or beneficial interest therein, including their control or direction, held by non-residents are held directly or indirectly in the same manner as the equity shares of the first mentioned corporation, but where the new corporation is in contravention of clause *a* or *b* of subsection 1, clause *a* of this subsection applies.

(3) For the purpose of this section, a shareholder shall be deemed to be associated with another shareholder if, ^{Associated shareholders}

- (a) one shareholder is a corporation of which the other shareholder is an officer or director;
- (b) one shareholder is a partner of which the other shareholder is a partner;
- (c) one shareholder is a corporation that is controlled, directly or indirectly, by the other shareholder;

- (d) both shareholders are corporations and one shareholder is controlled, directly or indirectly, by the same individual or corporation that controls, directly or indirectly, the other shareholder;
- (e) both shareholders are members of a voting trust where the trust relates to shares of a corporation; or
- (f) both shareholders are associated within the meaning of clauses *a* to *e* with the same shareholder.

Joint
ownership

(4) For the purpose of this section, where an equity share of the corporation is held jointly and one or more of the joint holders thereof is a non-resident, this share shall be deemed to be held by a non-resident.

s. 33 (a),
re-enacted

4. Clause *a* of section 33 of the said Act is repealed and the following substituted therefor:

- (a) exempting persons or classes of persons from this Act or the regulations or any provision thereof in addition to those exempted under section 2.

Commence-
ment

5. This Act comes into force on the day it receives Royal Assent.

Short title

6. This Act may be cited as *The Mortgage Brokers Amendment Act, 1973*.

An Act to amend
The Mortgage Brokers Act

1st Reading

October 2nd, 1973

2nd Reading

3rd Reading

THE HON. J. T. CLEMENT
Minister of Consumer and
Commercial Relations

(Government Bill)

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BILL 188

3RD SESSION, 29TH LEGISLATURE, ONTARIO
22 ELIZABETH II, 1973

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TORONTO

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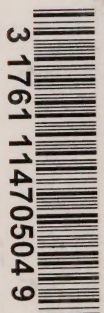
2nd Reading

October 16th, 1973

3rd Reading

October 22nd, 1973

THE HON. J. T. CLEMENT
Minister of Consumer and
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